

ESHB 1094 - H AMD 741

By Representative Harmsworth

ADOPTED 02/15/2016

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

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

13
14 NEW SECTION. **Sec. 2.** (1) A person may not enroll a biometric
15 identifier of an individual in a database for a commercial purpose
16 without providing clear and conspicuous notice and obtaining the
17 individual's affirmative consent.

18 (2) Clear and conspicuous notice is notice that is given through a
19 procedure reasonably designed to be prominent, timely, relevant, and
20 easily accessible. It should address the type of biometric identifier
21 that the person is capturing, the commercial purposes for which the
22 biometric identifier is being enrolled, and the circumstances in which
23 the biometric identifier may be disclosed to third parties. The exact
24 notice required to achieve this standard is context-dependent.

25 (3) A person who has enrolled an individual's biometric identifier
26 may not sell, lease, or otherwise disclose the biometric identifier to
27 another person for a commercial purpose unless the disclosure:

1 (a) Is consistent with the notice and consent described in
2 subsections (1) and (2) of this section;

3 (b) Is necessary to provide a product or service requested by the
4 individual;

5 (c) Is necessary to effect, administer, enforce, or complete a
6 financial transaction that the individual requested, initiated, or
7 authorized, and the third party to whom the biometric data is
8 disclosed maintains confidentiality of the biometric data and does not
9 further disclose the biometric data except as otherwise permitted
10 under this subsection (3);

11 (d) Is required or expressly authorized by a federal or state
12 statute, administrative code, or court order;

13 (e) Is made in good faith in response to a request from a law
14 enforcement officer that has represented to the person that such
15 disclosure is necessary to facilitate law enforcement's response to an
16 ongoing incident in which there is an imminent threat of danger or
17 harm to an individual;

18 (f) Is made to a third party who contractually promises that the
19 biometric identifier will not be further disclosed and will not be
20 enrolled in a database for a commercial purpose inconsistent with the
21 notice provided to the individual under subsections (1) and (2) of
22 this section; or

23 (g) Is made to prepare for litigation or to respond to or
24 participate in judicial process.

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

27 (a) Must take reasonable care to guard against unauthorized access
28 to biometric identifiers that is in the possession or under the
29 control of the person; and

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

32 (i) Comply with a court order, statute, or administrative rule;

33 (ii) Protect against or prevent actual or potential fraud,
34 criminal activity, claims, security threats, or liability; or

1 (iii) Effectuate the purposes for which an individual has provided
2 consent to the capture, enrollment, and disclosure of the biometric
3 information.

4 (5) A person who enrolls a biometric identifier of an individual
5 pursuant to this section may not use or disclose it in a manner that
6 is materially inconsistent with the terms under which the biometric
7 identifier was originally provided without obtaining consent.

8 (6) The limitations on disclosure and retention of biometric
9 identifiers provided in this section do not apply to disclosure or
10 retention of biometric identifiers that have been anonymized so as to
11 prevent the possibility of ascertaining the identity of a unique
12 individual.

13
14 NEW SECTION. **Sec. 3.** For purposes of this chapter, the following
15 definitions apply unless the context clearly requires otherwise:

16 (1) "Biometric sample" means a measurable physical characteristic
17 or personal behavioral trait obtained from a biometric sensor device
18 that can be used for identification of the individual.

19 (2) "Biometric identifier" means data generated by automatic
20 measurements of an individual's biological characteristics, such as a
21 fingerprint, voice print, eye retinas or irises, or other unique
22 biological characteristic, which are used by the person or licensee to
23 uniquely authenticate an individual's identity when the individual
24 accesses a system or account.

25 (3) "Biometric system" means an automated system capable of
26 capturing a biometric sample from an individual, extracting and
27 processing biometric data from that sample, storing the extracted
28 information in a database, comparing the biometric data with data
29 contained in one or more references, determining whether the biometric
30 data matches the reference, and indicating whether or not an
31 identification has been achieved.

32 (4) "Capture" means the process of using a sensor to collect a
33 biometric sample and related contextual data from a scene or an
34 individual, or both, with or without the individual's knowledge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

(5) "Commercial purpose" means a purpose in furtherance of the sale or disclosure of biometric data for the purpose of marketing of goods or services when such goods or services are unrelated to the initial commercial transaction in which a person first gains possession of an individual's biometric identifier. "Commercial purpose" does not include a security purpose.

(6) "Enroll" means to collect a biometric sample of an individual, convert it into a reference template, and store it in the biometric system's database for later comparison. Biometric samples converted in a reference template format cannot be reconstructed into the original output image.

(7) "Federal peace officer" has the meaning in RCW 10.93.020.

(8) "Identification" is the task by which a biometric system searches a database for a reference matching a biometric sample and, if found, returns a corresponding identity.

(9) "Law enforcement officer" means a law enforcement officer as defined in RCW 9.41.040 or a federal peace officer.

(10) "Person" has the meaning in RCW 19.345.010.

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

NEW SECTION. **Sec. 4.** The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A material violation of this chapter is not reasonable in relation to the development and preservation of business, is an unfair or deceptive act in trade or commerce and an unfair method of competition, and may be enforced by the attorney general under the consumer protection act, chapter 19.86 RCW.

1 NEW SECTION. **Sec. 5.** (1) Nothing in this act shall be construed
2 to apply in any manner to a financial institution or an affiliate of a
3 financial institution that is subject to Title V of the federal Gramm-
4 Leach-Bliley Act of 1999 and the rules promulgated thereunder.

5 (2) Nothing in this act shall be construed to expand or limit the
6 authority of a law enforcement officer acting within the scope of his
7 or her authority, including, but not limited to, the authority of a
8 state law enforcement officer in executing lawful searches and
9 seizures.

10

11 NEW SECTION. **Sec. 6.** Sections 2 through 5 constitute a new
12 chapter in Title 19 RCW."

13

14 Correct the title.

EFFECT: Strikes the underlying bill and provides the following:

- Prohibits a person from enrolling a biometric identifier of an individual in a database for a commercial purpose without providing clear and conspicuous notice and obtaining the individual's affirmative consent.
- Prohibits a person who has enrolled a biometric identifier from selling, leasing, or otherwise disclosing the biometric identifier to another person for a commercial purpose, unless the disclosure is consistent with the original notice and consent, or an exception applies.
- Requires a person who possesses a biometric identifier that has been enrolled for a commercial purpose to take reasonable care to guard against unauthorized access.
- Limits how long a biometric identifier may be retained.
- Provides that if the biometric identifier has been anonymized so as to prevent the possibility of ascertaining the identity of a unique individual, the limitations on disclosure and retention are inapplicable.
- Defines "biometric identifier" as data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voice print, eye retinas or irises, or other unique biological characteristic, which are used by the person or licensee to uniquely authenticate an individual's identity when the individual accesses a system or account.
- Defines "person" as any individual, partnership, corporation, limited liability company, other organization, or any combination thereof.

- Provides that "enroll" means to collect a biometric sample of an individual, convert it into a reference template, and store it in the biometric system's database for later comparison.
- Defines "commercial purpose" as a purpose in furtherance of the sale or disclosure of biometric data for the purpose of marketing goods or services when such goods or services are unrelated to the initial commercial transaction in which a person first gains possession of an individual's biometric identifier, and excludes from the definition a "security purpose," which includes preventing shoplifting, fraud, or other misappropriation.
- Prohibits construing the Act to apply in any manner to a financial institution or an affiliate that is subject to Title V of the federal Gramm-Leach-Bliley Act, or as expanding or limiting the authority of a law enforcement officer acting within the scope of his or her authority.
- Provides for enforcement by the Attorney General under the Consumer Protection Act.

--- END ---