
ENGROSSED SUBSTITUTE HOUSE BILL 1094

State of Washington

64th Legislature

2015 Regular Session

By House Technology & Economic Development (originally sponsored by Representative Morris)

READ FIRST TIME 02/09/15.

1 AN ACT Relating to biometric identifiers; and adding a new
2 section to chapter 19.215 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.215
5 RCW to read as follows:

6 (1) A person may not capture a biometric identifier of an
7 individual for a commercial purpose unless the person:

8 (a) Informs the individual before capturing the biometric
9 identifier; and

10 (b) Receives the individual's consent to capture the biometric
11 identifier.

12 (2) A person who legally possesses a biometric identifier of an
13 individual that is captured for a commercial purpose:

14 (a) May not sell, lease, or otherwise disclose the biometric
15 identifier to another person unless:

16 (i) The individual consents to the disclosure for identification
17 purposes in the event of the individual's disappearance or death or
18 otherwise consents to the disclosure to third parties;

19 (ii) The biometric data is disclosed to a service provider or
20 other third party as necessary to effect, administer, enforce, or
21 complete a financial transaction that the individual requested,

1 initiated, or authorized, provided that such a service provider or
2 third party shall maintain confidentiality of the biometric data and
3 not further disclose the biometric data except as permitted under
4 this subsection (2)(a);

5 (iii) The disclosure is required or expressly permitted by a
6 federal statute or by a state statute; or

7 (iv) The disclosure is made to a law enforcement agency for a law
8 enforcement purpose in response to a warrant;

9 (b) Shall store, transmit, and protect from disclosure the
10 biometric identifier using reasonable care and in a manner that is
11 the same as or more protective than industry standards relating to
12 administrative, technical, and physical safeguards for digital
13 copies, biometric identifiers, and other personal identifying
14 information; and

15 (c) Must retain the biometric identifier no longer than is
16 legally permissible by statute, rule, or public records retention
17 schedule specified under federal, state, or local authority, as
18 necessary to protect against or prevent actual or potential fraud,
19 criminal activity, claims, or liability, except as provided by
20 subsection (3) of this section.

21 (3)(a) If a biometric identifier captured for a commercial
22 purpose has been collected for contractual purposes, the purpose for
23 collecting the identifier under subsection (2)(c) of this section
24 continues until the latter of the termination of the continuous
25 contractual relationship, the time period necessary to carry out the
26 terms of the contract, or for as long as is permitted or required by
27 law.

28 (b) If a biometric identifier captured for a commercial purpose
29 has been collected for security purposes by an employer, the purpose
30 for collecting the identifier under subsection (2)(c) of this section
31 is presumed to expire on termination of the employment relationship.

32 (4) If a biometric identifier was initially captured for any
33 purpose other than a commercial purpose, it is a violation of this
34 act to use the biometric identifier at a later time for a commercial
35 purpose without an individual's consent.

36 (5) For the purpose of subsection (4) of this section, consent
37 means that an individual must actively opt-in to the use of the
38 biometric identifier. An active opt-in by an individual provides
39 consent for the use of the biometric identifier for no longer than
40 twenty-four hours.

1 (6) For purposes of this section, the following definitions apply
2 unless the context clearly requires otherwise:

3 (a) "Biometric identifier" means a characteristic, whether
4 biological, behavioral, or both, that uniquely identifies and enables
5 automated recognition of an individual, including but not limited to
6 fingerprints, DNA, hand geometry, palm print, and iris scan.
7 "Biometric identifier" also includes less sensitive identifiers
8 including, but not limited to, facial imaging, voice, and gait, only
9 when used for automated identification purposes. Video surveillance
10 and photographs derived from biometric identifiers are not considered
11 biometric identifiers.

12 (b) "Consent" means an authorization by an individual, given
13 after the individual has received clear and conspicuous notice in
14 writing of the purposes for which the biometric identifier may be
15 disclosed. When an individual consents to disclose his or her
16 biometric identifier to law enforcement without a warrant, consent
17 must be made separate from any other consent provided.

18 (7) The legislature finds that the practices covered by this
19 section are matters vitally affecting the public interest for the
20 purpose of applying the consumer protection act, chapter 19.86 RCW. A
21 violation of this chapter is not reasonable in relation to the
22 development and preservation of business and is an unfair or
23 deceptive act in trade or commerce and an unfair method of
24 competition for the purpose of applying the consumer protection act,
25 chapter 19.86 RCW.

26 (8) Nothing in this act shall be construed to expand or limit the
27 authority of a Washington state law enforcement officer acting within
28 the scope of his or her authority, including, but not limited to,
29 executing lawful searches and seizures.

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