
SECOND 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; adding a new chapter to
2 Title 19 RCW; and creating a new section.

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

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
11 obtain consent from an individual before enrolling an individual's
12 biometric identifiers in a database for commercial purposes.

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

17 (2) Clear and conspicuous notice is notice that is given through
18 a procedure reasonably designed to be prominent, timely, relevant,
19 and easily accessible. It should address the type of biometric
20 identifier that the person is capturing, the commercial purposes for

1 which the biometric identifier is being enrolled, and the
2 circumstances in which the biometric identifier may be disclosed to
3 third parties. The exact notice required to achieve this standard is
4 context-dependent.

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

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

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

13 (c) Is necessary to effect, administer, enforce, or complete a
14 financial transaction that the individual requested, initiated, or
15 authorized, and the third party to whom the biometric data is
16 disclosed maintains confidentiality of the biometric data and does
17 not further disclose the biometric data except as otherwise permitted
18 under this subsection (3);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (5) "Commercial purpose" means a purpose in furtherance of the
38 sale or disclosure of biometric data for the purpose of marketing of
39 goods or services when such goods or services are unrelated to the

1 initial commercial transaction in which a person first gains
2 possession of an individual's biometric identifier. "Commercial
3 purpose" does not include a security purpose.

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

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

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

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

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

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

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

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

31 (2) Nothing in this act shall be construed to expand or limit the
32 authority of a law enforcement officer acting within the scope of his
33 or her authority, including, but not limited to, the authority of a
34 state law enforcement officer in executing lawful searches and
35 seizures.

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

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