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ENGROSSED SUBSTITUTE HOUSE BILL 1493

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State of Washington

65th Legislature

2017 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Morris, Harmsworth, Smith, Tarleton, and Stanford)

READ FIRST TIME 02/16/17.

1 AN ACT Relating to biometric identifiers; and adding a new  
2 chapter to Title 19 RCW.

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 collection and marketing of biometric information  
8 about individuals, without consent or knowledge of the individual  
9 whose data is collected, is of increasing concern. The legislature  
10 intends to require a business that collects and can attribute  
11 biometric data to a specific uniquely identified individual to  
12 disclose how it uses that biometric data, and provide notice to and  
13 obtain consent from an individual before enrolling or changing the  
14 use of that individual's biometric identifiers in a database.

15 NEW SECTION. **Sec. 2.** (1) A person may not enroll a biometric  
16 identifier in a database for a commercial purpose, without first  
17 providing notice, obtaining consent, or providing a mechanism to  
18 prevent the subsequent use of a biometric identifier for a commercial  
19 purpose.

1 (2) Notice is a disclosure, that is not considered affirmative  
2 consent, that is given through a procedure reasonably designed to be  
3 readily available to affected individuals. The exact notice and type  
4 of consent required to achieve compliance with subsection (1) of this  
5 section is context-dependent.

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

10 (a) Is consistent with subsections (1), (2), and (4) of this  
11 section;

12 (b) Is necessary to provide a product or service subscribed to,  
13 requested, or expressly authorized by the individual;

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

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

22 (e) Is made to a third party who contractually promises that the  
23 biometric identifier will not be further disclosed and will not be  
24 enrolled in a database for a commercial purpose inconsistent with the  
25 notice and consent described in this subsection (3) and subsections  
26 (1) and (2) of this section; or

27 (f) Is made to prepare for litigation or to respond to or  
28 participate in judicial process.

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

31 (a) Must take reasonable care to guard against unauthorized  
32 access to and acquisition of biometric identifiers that are in the  
33 possession or under the control of the person; and

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

36 (i) Comply with a court order, statute, or public records  
37 retention schedule specified under federal, state, or local law;

38 (ii) Protect against or prevent actual or potential fraud,  
39 criminal activity, claims, security threats, or liability; and

1 (iii) Provide the services for which the biometric identifier was  
2 enrolled.

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

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 unenrolled.

13 (7) Nothing in this section requires an entity to provide notice  
14 and obtain consent to collect, capture, or enroll a biometric  
15 identifier and store it in a biometric system, or otherwise, in  
16 furtherance of a security purpose.

17 NEW SECTION. **Sec. 3.** The definitions in this section apply  
18 throughout this chapter, unless the context clearly requires  
19 otherwise.

20 (1) "Biometric identifier" means data generated by automatic  
21 measurements of an individual's biological characteristics, such as a  
22 fingerprint, voiceprint, eye retinas, irises, or other unique  
23 biological patterns or characteristics that is used to identify a  
24 specific individual. "Biometric identifier" does not include a  
25 physical or digital photograph, video or audio recording or data  
26 generated therefrom, or information collected, used, or stored for  
27 health care treatment, payment, or operations under the federal  
28 health insurance portability and accountability act of 1996.

29 (2) "Biometric system" means an automated identification system  
30 capable of capturing, processing, and storing a biometric identifier,  
31 comparing the biometric identifier to one or more references, and  
32 matching the biometric identifier to a specific individual.

33 (3) "Capture" means the process of collecting a biometric  
34 identifier from an individual.

35 (4) "Commercial purpose" means a purpose in furtherance of the  
36 sale or disclosure to a third party of a biometric identifier for the  
37 purpose of marketing of goods or services when such goods or services  
38 are unrelated to the initial transaction in which a person first

1 gains possession of an individual's biometric identifier. "Commercial  
2 purpose" does not include a security or law enforcement purpose.

3 (5) "Enroll" means to capture a biometric identifier of an  
4 individual, convert it into a reference template that cannot be  
5 reconstructed into the original output image, and store it in a  
6 database that matches the biometric identifier to a specific  
7 individual.

8 (6) "Law enforcement officer" means a law enforcement officer as  
9 defined in RCW 9.41.010 or a federal peace officer as defined in RCW  
10 10.93.020.

11 (7) "Person" means an individual, partnership, corporation,  
12 limited liability company, organization, association, or any other  
13 legal or commercial entity, but does not include a government agency.

14 (8) "Security purpose" means the purpose of preventing  
15 shoplifting, fraud, or any other misappropriation or theft of a thing  
16 of value, including tangible and intangible goods, services, and  
17 other purposes in furtherance of protecting the security or integrity  
18 of software, accounts, applications, online services, or any person.

19 NEW SECTION. **Sec. 4.** (1) The legislature finds that the  
20 practices covered by this chapter are matters vitally affecting the  
21 public interest for the purpose of applying the consumer protection  
22 act, chapter 19.86 RCW. A violation of this chapter is not reasonable  
23 in relation to the development and preservation of business and is an  
24 unfair or deceptive act in trade or commerce and an unfair method of  
25 competition for the purpose of applying the consumer protection act,  
26 chapter 19.86 RCW.

27 (2) This chapter may be enforced solely by the attorney general  
28 under the consumer protection act, chapter 19.86 RCW.

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

33 (2) Nothing in this act applies to activities subject to Title V  
34 of the federal health insurance privacy and portability act of 1996  
35 and the rules promulgated thereunder.

36 (3) Nothing in this act expands or limits the authority of a law  
37 enforcement officer acting within the scope of his or her authority

1 including, but not limited to, the authority of a state law  
2 enforcement officer in executing lawful searches and seizures.

3 NEW SECTION. **Sec. 6.** Sections 2 through 5 of this act  
4 constitute a new chapter in Title 19 RCW.

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