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**SUBSTITUTE HOUSE BILL 1717**

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**State of Washington                      65th Legislature                      2017 Regular Session**

**By** House Technology & Economic Development (originally sponsored by Representatives Smith, Morris, Harmsworth, DeBolt, Hudgins, Van Werven, Santos, and Stanford)

READ FIRST TIME 02/16/17.

1            AN ACT Relating to state agency collection, use, and retention of  
2 biometric identifiers; and adding a new chapter to Title 40 RCW.

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

4            NEW SECTION.    **Sec. 1.**    The legislature finds that the collection  
5 and use of personal information has been a practice of virtually all  
6 state agencies and programs. Advances in technology have given rise  
7 to new forms of data, such as email and internet protocol (IP)  
8 addresses, which can be easily collected and stored along with  
9 traditional types of data such as names and dates of birth. One new  
10 form of personally identifiable information is biometric identifiers.  
11 The unique nature of this new type of personal data calls for  
12 additional guidance regarding its use by state agencies.

13            NEW SECTION.    **Sec. 2.**    (1) An agency may not collect, capture,  
14 purchase, or otherwise obtain a biometric identifier without first  
15 providing notice and obtaining the individual's consent, as follows:

16            (a) The notice provided must clearly specify the purpose and use  
17 of the biometric identifier; and

18            (b) The consent obtained must be specific to the terms of the  
19 notice, and must be recorded and maintained by the agency for the  
20 duration of the retention of the biometric identifier.

1 (2) Any biometric identifier obtained by an agency:  
2 (a) May not be sold;  
3 (b) May only be used consistent with the terms of the notice and  
4 consent obtained under subsection (1) of this section; and  
5 (c) May be shared, including with other state agencies or local  
6 governments, only:  
7 (i) As needed to execute the purposes of the collection,  
8 consistent with the notice and consent obtained under subsection (1)  
9 of this section; or  
10 (ii) If such sharing is specified within the original consent.  
11 (3) An agency that collects, purchases, or otherwise obtains  
12 biometric identifiers must:  
13 (a) Establish security policies that ensure the integrity and  
14 appropriate confidentiality of the biometric identifiers;  
15 (b) Address biometric identifiers in the agency's privacy  
16 policies;  
17 (c) Only retain biometric identifiers necessary to fulfill the  
18 original purpose and use, as specified in the notice and consent  
19 obtained under subsection (1) of this section;  
20 (d) Set record retention schedules tailored to the original  
21 purpose of the collection of biometric identifiers;  
22 (e) Otherwise minimize the review and retention of the biometric  
23 identifiers, consistent with state record retention requirements; and  
24 (f) Design a biometric policy to ensure that the agency is  
25 minimizing the collection of biometric identifiers to the fewest  
26 number necessary to accomplish the agency mission.  
27 (4) The use and storage of biometric identifiers obtained by an  
28 agency must comply with all other applicable state and federal laws  
29 and regulations, including the health insurance portability and  
30 accountability act (HIPAA), the family educational rights and privacy  
31 act (FERPA), regulations regarding data breach notifications and  
32 individual privacy protections, and any policies or standards  
33 published by the office of the chief information officer.  
34 (5) Biometric identifiers used or retained by an agency or a  
35 general authority Washington law enforcement agency may not be  
36 disclosed under the public records act, chapter 42.56 RCW.  
37 (6) Agency policies, regulations, guidance, and retention  
38 schedules regarding biometric identifiers must be reviewed annually  
39 to incorporate any new technology, as appropriate, and respond to  
40 citizen complaints.

1 (7) The following definitions apply for purposes of this section:  
2 (a) "Agency" means every state office, department, division,  
3 bureau, board, commission, or other state agency, except that it does  
4 not include a general authority Washington law enforcement agency.  
5 (b) "Biometric identifier" means any information, regardless of  
6 how it is captured, converted, stored, or shared, based on an  
7 individual's retina or iris scan, fingerprint, voiceprint, or scan of  
8 hand or face geometry, except when such information is derived from:  
9 (i) Writing samples, written signatures, photographs, human  
10 biological samples used for valid scientific testing or screening,  
11 demographic data, tattoo descriptions, or physical descriptions such  
12 as height, weight, hair color, or eye color;  
13 (ii) Donated organ tissues or parts, or blood or serum stored on  
14 behalf of recipients or potential recipients of living or cadaveric  
15 transplants and obtained or stored by a federally designated organ  
16 procurement agency;  
17 (iii) Information captured from a patient in a health care  
18 setting or information collected, used, or stored for health care  
19 treatment, payment, or operations under the federal health insurance  
20 portability and accountability act of 1996; or  
21 (iv) X-ray, roentgen process, computed tomography, magnetic  
22 resonance imaging (MRI), positron emission tomography (PET) scan,  
23 mammography, or other image or film of the human anatomy used to  
24 diagnose, prognose, or treat an illness or other medical condition or  
25 to further validate scientific testing or screening.  
26 (c) "General authority Washington law enforcement agency" has the  
27 definition given in RCW 10.93.020.

28 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act constitute a  
29 new chapter in Title 40 RCW.

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