H-1979.2

SUBSTITUTE HOUSE BILL 1854

State of Washington   **66th Legislature**   **2019 Regular Session**

By House Innovation, Technology & Economic Development (originally sponsored by Representatives Kloba, Hudgins, Slatter, Tarleton, Smith, Ryu, Valdez, Stanford, and Pollet)

READ FIRST TIME 02/22/19.

1   AN ACT Relating to the management and oversight of personal data;
2   adding a new chapter to Title 19 RCW; creating new sections;
3   prescribing penalties; and providing an effective date.

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

5   NEW SECTION. **Sec. 1.**   SHORT TITLE. This act may be known and
6   cited as the Washington privacy act.

7   NEW SECTION. **Sec. 2.**   LEGISLATIVE FINDINGS. (1) The legislature
8   finds that:
9   (a) Washington explicitly recognizes its citizens' right to
10   privacy under Article I, section 7 of the state Constitution.
11   (b) There is rapid growth in the volume and variety of personal
12   data being generated, collected, stored, and analyzed. The protection
13   of individual privacy and freedom in relation to the processing of
14   personal data requires the recognition of the principle of joint
15   ownership of personal data between consumers and controllers that
16   process the data.
17   (2) To preserve trust and confidence that personal data will be
18   protected appropriately, the legislature recognizes that with regard
19   to processing of personal data, Washington consumers should have the
20   rights to:

1   (a) Confirm whether or not personal data concerning the consumer
2 is being processed by a controller;
3   (b) Obtain a copy of the personal data undergoing processing;
4   (c) Correct inaccurate personal data;
5   (d) Obtain deletion of personal data;
6   (e) Restrict processing of personal data;
7   (f) Be provided with any of the consumer's personal data that the
8 consumer provided to a controller;
9   (g) Object to processing of personal data; and
10   (h) Not be subject to a decision based solely on profiling.

11   NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
12 section apply throughout this chapter unless the context clearly
13 requires otherwise.

14   NEW SECTION. **Sec. 4.** JURISDICTIONAL SCOPE. (1) This chapter
15 applies to legal entities that conduct business in Washington or
16 produce products or services that are intentionally targeted to
17 residents of Washington, and that satisfy one or more of the
18 following thresholds:
19   (a) Controls or processes personal data of one hundred thousand
20 consumers or more; or
21   (b) Derives over fifty percent of gross revenue from the sale of
22 personal data and processes or controls personal data of twenty-five
23 thousand consumers or more.
24   (2) This chapter does not apply to:
25   (a) State and local governments; or
26   (b) Municipal corporations.

27   NEW SECTION. **Sec. 5.** RESPONSIBILITY ACCORDING TO ROLE.
28 Controllers are responsible for meeting the obligations established
29 under this chapter.

30   NEW SECTION. **Sec. 6.** CONSUMER RIGHTS. Consumers may require a
31 controller to:
32   (1) Confirm whether or not personal data concerning the consumer
33 is being processed by the controller;
34   (2) Provide a copy of the personal data undergoing processing to
35 the consumer;
36   (3) Correct inaccurate personal data;

1   (4) Delete the personal data of the consumer;

2   (5) Restrict processing of personal data;

3   (6) Provide the consumer's own personal data that the consumer

4 provided to a controller to the consumer;

5   (7) Stop processing the consumer's personal data; and

6   (8) Not subject the consumer to a decision based solely on

7 profiling.

8   NEW SECTION. **Sec. 7.** TRANSPARENCY. Controllers must be

9 transparent and accountable for their processing of personal data.

10   NEW SECTION. **Sec. 8.** COMPLIANCE. (1) Controllers must develop

11 and make publicly available an annual plan for complying with the

12 obligations under this chapter.

13   (2) A controller that has developed a compliance plan for the

14 European general data protection regulation 2016/679 may use that

15 plan for purposes of subsection (1) of this section.

16   NEW SECTION. **Sec. 9.** DOCUMENTED RISK ASSESSMENTS. Controllers

17 must conduct documented risk assessments.

18   NEW SECTION. **Sec. 10.** DEIDENTIFIED DATA. A controller or

19 processor that uses deidentified data must exercise reasonable

20 oversight to monitor compliance with any contractual commitments to

21 which the deidentified data is subject, and must take appropriate

22 steps to address any breaches of contractual commitments.

23   NEW SECTION. **Sec. 11.** EXEMPTIONS. The exemptions in this

24 section apply throughout this chapter unless stated otherwise.

25   NEW SECTION. **Sec. 12.** LIABILITY. Where more than one controller

26 or processor, or both a controller and a processor, involved in the

27 same processing, is in violation of this chapter, the liability must

28 be allocated among the parties according to principles of comparative

29 fault, unless liability is otherwise allocated by contract among the

30 parties.

31   NEW SECTION. **Sec. 13.** ENFORCEMENT. (1) The legislature finds

32 that the practices covered by this chapter are matters vitally

33 affecting the public interest for the purpose of applying the

consumer protection act, chapter 19.86 RCW. A violation of this
chapter is not reasonable in relation to the development and
preservation of business and is an unfair or deceptive act in trade
or commerce and an unfair method of competition for the purpose of
applying the consumer protection act, chapter 19.86 RCW.

(2) The attorney general may bring an action in the name of the
state, or as parens patriae on behalf of persons residing in the
state, to enforce this chapter.

(3) Prior to bringing an action for violations of this chapter, a
consumer must provide a controller with a written notice identifying
the specific provisions of this chapter that the consumer alleges
have been or are being violated. In the event a cure is possible and
the controller does not cure the noticed violation within thirty
days, the consumer must notify the attorney general of the consumer's
intent to bring an action.

(4) Upon receiving such notice, the attorney general must either:

(a) Notify the consumer within thirty days that the attorney
general intends to bring an action under subsections (1) and (2) of
this section and that the consumer may not proceed with a separate
action; or

(b) Refrain from acting within thirty days and allow the consumer
to bring an action.

(5) Any controller or processor that violates this chapter is
subject to an injunction and liable for a civil penalty of not more
than two thousand five hundred dollars for each violation or seven
thousand five hundred dollars for each intentional violation.

NEW SECTION. **Sec. 14.** PREEMPTION. This chapter supersedes and
preempts laws, ordinances, regulations, or the equivalent adopted by
any local entity regarding the processing of personal data by
controllers or processors.

NEW SECTION. **Sec. 15.** FACIAL RECOGNITION. Controllers must
obtain consent from consumers before deploying facial recognition
services.

NEW SECTION. **Sec. 16.** Sections 3 through 15 of this act
constitute a new chapter in Title 19 RCW.

1   NEW SECTION. **Sec. 17.** If any provision of this act or its
2   application to any person or circumstance is held invalid, the
3   remainder of the act or the application of the provision to other
4   persons or circumstances is not affected.

5   NEW SECTION. **Sec. 18.** This act takes effect July 30, 2021.

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