
HOUSE BILL 2742

State of Washington

66th Legislature

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By Representatives Kloba, Hudgins, Lekanoff, and Pollet

Read first time 01/20/20. Referred to Committee on Innovation, Technology & Economic Development.

1 AN ACT Relating to the management and oversight of personal data;
2 adding a new chapter to Title 19 RCW; prescribing penalties; and
3 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 the people of Washington regard their privacy as a
9 fundamental right and an essential element of their individual
10 freedom. Washington's Constitution explicitly provides the right to
11 privacy, and fundamental privacy rights have long been and continue
12 to be integral to protecting Washingtonians and to safeguarding our
13 democratic republic.

14 (2) Ongoing advances in technology have produced an exponential
15 growth in the volume and variety of personal data being generated,
16 collected, stored, and analyzed, which presents both promise and
17 potential peril. The ability to harness and use data in positive ways
18 is driving innovation and brings beneficial technologies to society;
19 however, it has also created risks to privacy and freedom. The
20 unregulated and unauthorized use and disclosure of personal

1 information and loss of privacy can have devastating impacts, ranging
2 from financial fraud, identity theft, and unnecessary costs, to
3 personal time and finances, to destruction of property, harassment,
4 reputational damage, emotional distress, and physical harm.

5 (3) Given that technological innovation and new uses of data can
6 help solve societal problems and improve quality of life, the
7 legislature seeks to shape responsible public policies where
8 innovation and protection of individual privacy coexist. The
9 legislature notes that our federal authorities have not developed or
10 adopted into law regulatory or legislative solutions that give
11 consumers control over their privacy. In contrast, the European
12 Union's general data privacy regulation has continued to influence
13 data privacy policies and practices of those businesses competing in
14 global markets. In the absence of federal standards, Washington and
15 other states across the United States are analyzing elements of the
16 European Union's general data privacy regulation to enact state-based
17 data privacy regulatory protections.

18 (4) With this act, Washington state will be among the first tier
19 of states giving consumers the ability to protect their own rights to
20 privacy and requiring companies to be responsible custodians of data
21 as technological innovations emerge. This act does so by explicitly
22 providing consumers the right to access, correction, and deletion of
23 personal data, as well as the right to opt out of the collection and
24 use of personal data for certain purposes. These rights will add to,
25 and not subtract from, the consumer protection rights that consumers
26 already have under Washington state law.

27 (5) Additionally, this act imposes affirmative obligations upon
28 companies to safeguard personal data and provide clear,
29 understandable, and transparent information to consumers about how
30 their personal data are used. It strengthens compliance and
31 accountability by requiring data protection assessments in the
32 collection and use of personal data. Finally, it empowers the state
33 attorney general to obtain and evaluate a company's data protection
34 assessments, to impose penalties where violations occur, and to
35 prevent against future violations.

36 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
37 section apply throughout this chapter unless the context clearly
38 requires otherwise.

1 (1) "Affiliate" means a legal entity that shares common branding
2 with another legal entity and that controls, is controlled by, or is
3 under common control with, that other legal entity. For these
4 purposes, "control" or "controlled" means ownership of, or the power
5 to vote, more than fifty percent of the outstanding shares of any
6 class of voting security of a company; control in any manner over the
7 election of a majority of the directors or of individuals exercising
8 similar functions; or the power to exercise a controlling influence
9 over the management of a company.

10 (2) "Authenticate" means to use reasonable means to determine
11 that a request to exercise any of the rights in section 6 (1) through
12 (5) of this act is being made by the consumer who is entitled to
13 exercise such rights.

14 (3) "Business associate" has the same meaning as in Title 45
15 C.F.R., established pursuant to the federal health insurance
16 portability and accountability act of 1996.

17 (4) "Child" means any natural person under thirteen years of age.

18 (5) "Consent" means a clear affirmative act signifying a freely
19 given, specific, informed, and unambiguous indication of a consumer's
20 agreement to the processing of personal data relating to the
21 consumer, such as by a written statement, including by electronic
22 means, or other clear affirmative action.

23 (6) "Consumer" means a natural person who is a Washington
24 resident acting only in an individual or household context. It does
25 not include a natural person acting in a commercial or employment
26 context.

27 (7) "Controller" means the natural or legal person which, alone
28 or jointly with others, determines the purposes and means of the
29 processing of personal data.

30 (8) "Covered entity" has the same meaning as in Title 45 C.F.R.,
31 established pursuant to the federal health insurance portability and
32 accountability act of 1996.

33 (9) "Decisions that produce legal effects concerning a consumer
34 or similarly significant effects concerning a consumer" means
35 decisions that include, but are not limited to, the denial of
36 consequential services or support, such as financial and lending
37 services, housing, insurance, education enrollment, criminal justice,
38 employment opportunities, health care services, and access to basic
39 necessities, such as food and water.

1 (10) "Deidentified data" means data that cannot reasonably be
2 used to infer information about, or otherwise be linked to, an
3 identified or identifiable natural person, or a device linked to such
4 person, provided that the business that possesses the data: (a) Takes
5 reasonable measures to ensure that the data cannot be associated with
6 a natural person or household; (b) publicly commits to maintain and
7 use the data only in a deidentified fashion and not attempt to
8 reidentify the data; and (c) contractually obligates any recipients
9 of the information to comply with all provisions of this subsection.

10 (11) "Enroll," "enrolled," or "enrolling" means the process by
11 which a facial recognition service creates a facial template from one
12 or more images of a consumer and adds the facial template to a
13 gallery used by the facial recognition service for identification,
14 verification, or persistent tracking of consumers. It also includes
15 the act of adding an existing facial template directly into a gallery
16 used by a facial recognition service.

17 (12) "Facial recognition service" means technology that analyzes
18 facial features and is used for the identification, verification, or
19 persistent tracking of consumers in still or video images.

20 (13) "Facial template" means the machine-interpretable pattern of
21 facial features that is extracted from one or more images of a
22 consumer by a facial recognition service.

23 (14) "Health care facility" has the same meaning as in RCW
24 70.02.010.

25 (15) "Health care information" has the same meaning as in RCW
26 70.02.010.

27 (16) "Health care provider" has the same meaning as in RCW
28 70.02.010.

29 (17) "Identification" means the use of a facial recognition
30 service by a controller to determine whether an unknown consumer
31 matches any consumer who has been enrolled in a gallery used by the
32 facial recognition service.

33 (18) "Identified or identifiable natural person" means a person
34 who can be readily identified, directly or indirectly.

35 (19) "Meaningful human review" means review or oversight by one
36 or more individuals who are trained in accordance with section 18(9)
37 of this act and who have the authority to alter the decision under
38 review.

39 (20) "Ongoing surveillance" means tracking the physical movements
40 of a specified individual through one or more public places over

1 time, whether in real time or through application of a facial
2 recognition service to historical records. It does not include a
3 single recognition or attempted recognition of an individual if no
4 attempt is made to subsequently track that individual's movement over
5 time after the individual has been recognized.

6 (21) "Persistent tracking" means the use of a facial recognition
7 service to track the movements of a consumer on a persistent basis
8 without recognition of that consumer. Such tracking becomes
9 persistent as soon as:

10 (a) The facial template that permits the tracking uses a facial
11 recognition service for more than forty-eight hours after the first
12 enrolling of that template; or

13 (b) The data created by the facial recognition service are linked
14 to any other data such that the consumer who has been tracked is
15 identified or identifiable.

16 (22)(a) "Personal data" means any information that is linked or
17 reasonably linkable to an identified or identifiable natural person.
18 "Personal data" does not include deidentified data or publicly
19 available information.

20 (b) For purposes of this subsection, "publicly available
21 information" means information that is lawfully made available from
22 federal, state, or local government records.

23 (23) "Process" or "processing" means any operation or set of
24 operations which are performed on personal data or on sets of
25 personal data, whether or not by automated means, such as the
26 collection, use, storage, disclosure, analysis, deletion, or
27 modification of personal data.

28 (24) "Processor" means a natural or legal person who processes
29 personal data on behalf of a controller.

30 (25) "Profiling" means any form of automated processing of
31 personal data to evaluate, analyze, or predict personal aspects
32 concerning an identified or identifiable natural person's economic
33 situation, health, personal preferences, interests, reliability,
34 behavior, location, or movements.

35 (26) "Protected health information" has the same meaning as in
36 Title 45 C.F.R., established pursuant to the federal health insurance
37 portability and accountability act of 1996.

38 (27) "Pseudonymous data" means personal data that cannot be
39 attributed to a specific natural person without the use of additional
40 information, provided that such additional information is kept

1 separately and is subject to appropriate technical and organizational
2 measures to ensure that the personal data are not attributed to an
3 identified or identifiable natural person.

4 (28) "Recognition" means the use of a facial recognition service
5 to determine whether:

6 (a) An unknown consumer matches any consumer who has been
7 enrolled in a gallery used by the facial recognition service; or

8 (b) An unknown consumer matches a specific consumer who has been
9 enrolled in a gallery used by the facial recognition service.

10 (29)(a) "Sale," "sell," or "sold" means the exchange of personal
11 data for monetary or other valuable consideration by the controller
12 to a third party.

13 (b) "Sale" does not include the following: (i) The disclosure of
14 personal data to a processor who processes the personal data on
15 behalf of the controller; (ii) the disclosure of personal data to a
16 third party with whom the consumer has a direct relationship for
17 purposes of providing a product or service requested by the consumer
18 or otherwise in a manner that is consistent with a consumer's
19 reasonable expectations considering the context in which the consumer
20 provided the personal data to the controller; (iii) the disclosure or
21 transfer of personal data to an affiliate of the controller; or (iv)
22 the disclosure or transfer of personal data to a third party as an
23 asset that is part of a merger, acquisition, bankruptcy, or other
24 transaction in which the third party assumes control of all or part
25 of the controller's assets.

26 (30) "Security or safety purpose" means physical security,
27 protection of consumer data, safety, fraud prevention, or asset
28 protection.

29 (31) "Sensitive data" means (a) personal data revealing racial or
30 ethnic origin, religious beliefs, mental or physical health condition
31 or diagnosis, sexual orientation, or citizenship or immigration
32 status; (b) the processing of genetic or biometric data for the
33 purpose of uniquely identifying a natural person; (c) the personal
34 data from a known child; or (d) specific geolocation data. "Sensitive
35 data" is a form of personal data.

36 (32) "Serious criminal offense" means any felony under chapter
37 9.94A RCW or an offense enumerated by Title 18 U.S.C. Sec. 2516.

38 (33) "Specific geolocation data" means information that directly
39 identifies the specific location of a natural person with the
40 precision and accuracy below one thousand seven hundred fifty feet.

1 (34) "Targeted advertising" means displaying advertisements to a
2 consumer where the advertisement is selected based on personal data
3 obtained from a consumer's activities over time and across
4 nonaffiliated web sites or online applications to predict such
5 consumer's preferences or interests. It does not include advertising:
6 (a) Based on activities within a controller's own web sites or online
7 applications; (b) based on the context of a consumer's current search
8 query or visit to a web site or online application; or (c) to a
9 consumer in response to the consumer's request for information or
10 feedback.

11 (35) "Third party" means a natural or legal person, public
12 authority, agency, or body other than the consumer, controller,
13 processor, or an affiliate of the processor of the controller.

14 (36) "Verification" means the use of a facial recognition service
15 by a controller to determine whether a consumer is a specific
16 consumer enrolled in a gallery used by the facial recognition
17 service.

18 NEW SECTION. **Sec. 4.** JURISDICTIONAL SCOPE. (1) This chapter
19 applies to legal entities that conduct business in Washington or
20 produce products or services that are targeted to residents of
21 Washington, and that satisfy one or more of the following thresholds:

22 (a) Controls or processes personal data of one hundred thousand
23 consumers or more; or

24 (b) Derives over fifty percent of gross revenue from the sale of
25 personal data and processes or controls personal data of twenty-five
26 thousand consumers or more.

27 (2) This chapter does not apply to:

28 (a) State and local governments;

29 (b) Municipal corporations;

30 (c) Information that meets the definition of:

31 (i) Protected health information for purposes of the federal
32 health insurance portability and accountability act of 1996 and
33 related regulations;

34 (ii) Health care information for purposes of chapter 70.02 RCW;

35 (iii) Patient identifying information for purposes of 42 C.F.R.
36 Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

37 (iv) Identifiable private information for purposes of the federal
38 policy for the protection of human subjects, 45 C.F.R. Part 46, or
39 identifiable private information that is otherwise information

1 collected as part of human subjects research pursuant to the good
2 clinical practice guidelines issued by the international council for
3 harmonisation, or the protection of human subjects under 21 C.F.R.
4 Parts 50 and 56;

5 (v) Information and documents created specifically for, and
6 collected and maintained by:

7 (A) A quality improvement committee for purposes of RCW
8 43.70.510, 70.230.080, or 70.41.200;

9 (B) A peer review committee for purposes of RCW 4.24.250;

10 (C) A quality assurance committee for purposes of RCW 74.42.640
11 or 18.20.390;

12 (D) A hospital, as defined in RCW 43.70.056, for reporting of
13 health care-associated infections for purposes of RCW 43.70.056, a
14 notification of an incident for purposes of RCW 70.56.040(5), or
15 reports regarding adverse events for purposes of RCW 70.56.020(2)(b);

16 (vi) Information and documents created for purposes of the
17 federal health care quality improvement act of 1986, and related
18 regulations; or

19 (vii) Patient safety work product for purposes of 42 C.F.R. Part
20 3, established pursuant to 42 U.S.C. Sec. 299b-21 through 299b-26;

21 (d) Information originating from, and intermingled to be
22 indistinguishable with, information under (c) of this subsection that
23 is maintained by:

24 (i) A covered entity or business associate as defined by the
25 health insurance portability and accountability act of 1996 and
26 related regulations;

27 (ii) A health care facility or health care provider as defined in
28 RCW 70.02.010; or

29 (iii) A program or a qualified service organization as defined by
30 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

31 (e) An activity involving the collection, maintenance,
32 disclosure, sale, communication, or use of any personal information
33 bearing on a consumer's credit worthiness, credit standing, credit
34 capacity, character, general reputation, personal characteristics, or
35 mode of living by a consumer reporting agency, as defined in Title 15
36 U.S.C. Sec. 1681a(f), by a furnisher of information, as set forth in
37 Title 15 U.S.C. Sec. 1681s-2, who provides information for use in a
38 consumer report, as defined in Title 15 U.S.C. Sec. 1681a(d), and by
39 a user of a consumer report, as set forth in Title 15 U.S.C. Sec.
40 1681b.

1 Such activity involving the collection, maintenance, disclosure,
2 sale, communication, or use of such information by that agency,
3 furnisher, or user is subject to regulation under the fair credit
4 reporting act, Title 15 U.S.C. Sec. 1681 et seq., and the information
5 may not be used, communicated, disclosed, or sold except as
6 authorized by the fair credit reporting act;

7 (f) Personal data collected and maintained for purposes of
8 chapter 43.71 RCW;

9 (g) Personal data collected, processed, sold, or disclosed
10 pursuant to the federal Gramm-Leach-Bliley act (P.L. 106-102), and
11 implementing regulations, if the collection, processing, sale, or
12 disclosure is in compliance with that law;

13 (h) Personal data collected, processed, sold, or disclosed
14 pursuant to the federal driver's privacy protection act of 1994 (18
15 U.S.C. Sec. 2721 et seq.), if the collection, processing, sale, or
16 disclosure is in compliance with that law;

17 (i) Controllers that are in compliance with the verifiable
18 parental consent mechanisms under the children's online privacy
19 protection act, Title 15 U.S.C. Sec. 6501 through 6506 and its
20 implementing regulations. Controllers shall be deemed compliant with
21 any obligation to obtain parental consent under this chapter;

22 (j) Personal data regulated by the federal family educations
23 rights and privacy act, 20 U.S.C. Sec. 1232g and its implementing
24 regulations;

25 (k) Personal data regulated by the student user privacy in
26 education rights act, chapter 28A.604 RCW; or

27 (l) Data maintained for employment records purposes.

28 NEW SECTION. **Sec. 5.** RESPONSIBILITY ACCORDING TO ROLE. (1)

29 Controllers and processors are responsible for meeting their
30 respective obligations established under this chapter.

31 (2) Processors are responsible under this chapter for adhering to
32 the instructions of the controller and assisting the controller to
33 meet its obligations under this chapter. Such assistance shall
34 include the following:

35 (a) Taking into account the nature of the processing, the
36 processor shall assist the controller by appropriate technical and
37 organizational measures, insofar as this is possible, for the
38 fulfillment of the controller's obligation to respond to consumer

1 requests to exercise their rights pursuant to section 6 of this act;
2 and

3 (b) Taking into account the nature of processing and the
4 information available to the processor, the processor shall assist
5 the controller in meeting the controller's obligations in relation to
6 the security of processing the personal data and in relation to the
7 notification of a breach of the security of the system pursuant to
8 RCW 19.255.010; and shall provide information to the controller
9 necessary to enable the controller to conduct and document any data
10 protection assessments required by section 9 of this act.

11 (3) Notwithstanding the instructions of the controller, a
12 processor shall:

13 (a) Implement and maintain reasonable security procedures and
14 practices to protect personal data, taking into account the context
15 in which the personal data are to be processed;

16 (b) Ensure that each person processing the personal data is
17 subject to a duty of confidentiality with respect to the data; and

18 (c) Engage a subcontractor only after providing the controller
19 with an opportunity to object and pursuant to a written contract in
20 accordance with subsection (5) of this section that requires the
21 subcontractor to meet the obligations of the processor with respect
22 to the personal data.

23 (4) Processing by a processor shall be governed by a contract
24 between the controller and the processor that is binding on both
25 parties and that sets out the processing instructions to which the
26 processor is bound, including the nature and purpose of the
27 processing, the type of personal data subject to the processing, the
28 duration of the processing, and the obligations and rights of both
29 parties. In addition, the contract shall include the requirements
30 imposed by this subsection and subsection (3) of this section, as
31 well as the following requirements:

32 (a) At the choice of the controller, the processor shall delete
33 or return all personal data to the controller as requested at the end
34 of the provision of services, unless retention of the personal data
35 is required by law;

36 (b) (i) The processor shall make available to the controller all
37 information necessary to demonstrate compliance with the obligations
38 in this chapter; and (ii) the processor shall allow for, and
39 contribute to, reasonable audits and inspections by the controller or
40 the controller's designated auditor; alternatively, the processor

1 shall arrange for a qualified and independent auditor to conduct, at
2 least annually and at the processor's expense, an audit of the
3 processor's policies and technical and organizational measures in
4 support of the obligations under this chapter using an appropriate
5 and accepted control standard or framework and audit procedure for
6 such audits as applicable, and shall provide a report of such audit
7 to the controller upon request.

8 (5) In no event shall any contract relieve a controller or a
9 processor from the liabilities imposed on them by virtue of its role
10 in the processing relationship as defined by this chapter.

11 (6) Determining whether a person is acting as a controller or
12 processor with respect to a specific processing of data is a fact-
13 based determination that depends upon the context in which personal
14 data are to be processed. A person that is not limited in its
15 processing of personal data pursuant to a controller's instructions,
16 or that fails to adhere to such instructions, is a controller and not
17 a processor with respect to a specific processing of data. If a
18 processor begins, alone or jointly with others, determining the
19 purposes and means of the processing of personal data, it is a
20 controller with respect to such processing.

21 NEW SECTION. **Sec. 6.** CONSUMER PERSONAL DATA RIGHTS. Consumers
22 may exercise the rights set forth in this section by submitting a
23 request, at any time, to a controller specifying which rights the
24 consumer wishes to exercise. In the case of processing personal data
25 concerning a known child, the parent or legal guardian of the known
26 child shall exercise the rights of this chapter on the child's
27 behalf. Except as provided in this chapter, the controller must
28 comply with a request to exercise the rights pursuant to subsections
29 (1) through (5) of this section.

30 (1) *Right of access.* A consumer has the right to confirm whether
31 or not a controller is processing personal data concerning the
32 consumer and access such personal data.

33 (2) *Right to correction.* A consumer has the right to correct
34 inaccurate personal data concerning the consumer, taking into account
35 the nature of the personal data and the purposes of the processing of
36 the personal data.

37 (3) *Right to deletion.* A consumer has the right to delete
38 personal data concerning the consumer.

1 (4) *Right to data portability.* When exercising the right to
2 access personal data pursuant to subsection (1) of this section, a
3 consumer has the right to obtain personal data concerning the
4 consumer, which the consumer previously provided to the controller,
5 in a portable and, to the extent technically feasible, readily usable
6 format that allows the consumer to transmit the data to another
7 controller without hindrance, where the processing is carried out by
8 automated means.

9 (5) *Right to opt out.* A consumer has the right to opt out of the
10 processing of personal data concerning such consumer for purposes of
11 targeted advertising, the sale of personal data, or profiling in
12 furtherance of decisions that produce legal effects concerning a
13 consumer or similarly significant effects concerning a consumer.

14 (6) *Notifying third parties of consumer requests.* A controller
15 must, upon request, take reasonable steps to communicate a consumer's
16 request to correct, delete, or opt out of the processing of personal
17 data under subsection (2), (3), or (5) of this section to each third
18 party to whom the controller disclosed the personal data within one
19 year preceding the consumer's request, unless this proves
20 functionally impractical, technically infeasible, or involves
21 disproportionate effort.

22 (7) *Responding to consumer requests.* (a) A controller must inform
23 a consumer of any action taken on a request under subsections (1)
24 through (5) of this section without undue delay and in any event
25 within forty-five days of receipt of the request. That period may be
26 extended once by forty-five additional days where reasonably
27 necessary, taking into account the complexity and number of the
28 requests. The controller must inform the consumer of any such
29 extension within forty-five days of receipt of the request, together
30 with the reasons for the delay.

31 (b) If a controller does not take action on the request of a
32 consumer, the controller must inform the consumer without undue delay
33 and at the latest within thirty days of receipt of the request of the
34 reasons for not taking action and instructions for how to appeal the
35 decision with the controller as described in subsection (8) of this
36 section.

37 (c) Information provided under this section must be provided by
38 the controller free of charge, up to twice annually to the consumer.
39 Where requests from a consumer are manifestly unfounded or excessive,
40 in particular because of their repetitive character, the controller

1 may either: (i) Charge a reasonable fee to cover the administrative
2 costs of complying with the request, or (ii) refuse to act on the
3 request. The controller bears the burden of demonstrating the
4 manifestly unfounded or excessive character of the request.

5 (d) A controller is not required to comply with a request to
6 exercise any of the rights under subsections (1) through (4) of this
7 section if the controller is unable to authenticate the request using
8 commercially reasonable efforts. In such cases, the controller may
9 request the provision of additional information reasonably necessary
10 to authenticate the request.

11 (8)(a) Controllers must establish an internal process whereby
12 consumers may appeal a refusal to take action on a request to
13 exercise any of the rights under subsections (1) through (5) of this
14 section within a reasonable period of time after the consumer's
15 receipt of the notice sent by the controller under subsection (7)(b)
16 of this section.

17 (b) The appeal process must be conspicuously available and as
18 easy to use as the process for submitting such requests under this
19 section.

20 (c) Within thirty days of receipt of an appeal, a controller must
21 inform the consumer of any action taken or not taken in response to
22 the appeal, along with a written explanation of the reasons in
23 support thereof. That period may be extended by sixty additional days
24 where reasonably necessary, taking into account the complexity and
25 number of the requests serving as the basis for the appeal. The
26 controller must inform the consumer of any such extension within
27 thirty days of receipt of the appeal, together with the reasons for
28 the delay. The controller must also provide the consumer with an
29 email address or other online mechanism through which the consumer
30 may submit the appeal, along with any action taken or not taken by
31 the controller in response to the appeal and the controller's written
32 explanation of the reasons in support thereof, to the attorney
33 general.

34 (d) When informing a consumer of any action taken or not taken in
35 response to an appeal pursuant to (c) of this subsection, the
36 controller must clearly and prominently ask the consumer whether the
37 consumer consents to having the controller submit the appeal, along
38 with any action taken or not taken by the controller in response to
39 the appeal and the controller's written explanation of the reasons in
40 support thereof, to the attorney general. If the consumer provides

1 such consent, the controller must submit such information to the
2 attorney general.

3 (e) The attorney general must make publicly available on its web
4 site all information it receives from a controller pursuant to (d) of
5 this subsection, except that any information that may identify a
6 consumer shall be redacted from such information before it is made
7 publicly available on the attorney general's web site.

8 NEW SECTION. **Sec. 7.** PROCESSING DEIDENTIFIED DATA OR
9 PSEUDONYMOUS DATA. (1) This chapter does not require a controller or
10 processor to do any of the following solely for purposes of complying
11 with this chapter:

12 (a) Reidentify deidentified data;

13 (b) Comply with an authenticated consumer request to access,
14 correct, delete, or port personal data pursuant to section 6 (1)
15 through (4) of this act, if all of the following are true:

16 (i) (A) The controller is not reasonably capable of associating
17 the request with the personal data, or (B) it would be unreasonably
18 burdensome for the controller to associate the request with the
19 personal data;

20 (ii) The controller does not use the personal data to recognize
21 or respond to the specific consumer who is the subject of the
22 personal data, or associate the personal data with other personal
23 data about the same specific consumer; and

24 (iii) The controller does not sell the personal data to any third
25 party or otherwise voluntarily disclose the personal data to any
26 third party other than a processor, except as otherwise permitted in
27 this section; or

28 (c) Maintain data in identifiable form, or collect, obtain,
29 retain, or access any data or technology, in order to be capable of
30 associating an authenticated consumer request with personal data.

31 (2) The rights contained in section 6 (1) through (4) of this act
32 do not apply to pseudonymous data in cases where the controller is
33 able to demonstrate that it is not in a position to identify the
34 consumer, for instance, due to the institution of effective technical
35 and organizational controls that prevent the controller from
36 accessing information that would enable the identification of the
37 consumer.

38 (3) A controller that uses pseudonymous data or deidentified data
39 must exercise reasonable oversight to monitor compliance with any

1 contractual commitments to which the pseudonymous data or
2 deidentified data are subject, and must take appropriate steps to
3 address any breaches of contractual commitments.

4 NEW SECTION. **Sec. 8.** RESPONSIBILITIES OF CONTROLLERS. (1)
5 *Transparency.*

6 (a) Controllers shall provide consumers with a reasonably
7 accessible, clear, and meaningful privacy notice that includes:

8 (i) The categories of personal data processed by the controller;

9 (ii) The purposes for which the categories of personal data are
10 processed;

11 (iii) How and where consumers may exercise the rights contained
12 in section 6 of this act, including how a consumer may appeal a
13 controller's action with regard to the consumer's request;

14 (iv) The categories of personal data that the controller shares
15 with third parties, if any; and

16 (v) The categories of third parties, if any, with whom the
17 controller shares personal data.

18 (b) If a controller sells personal data to third parties or
19 processes personal data for targeted advertising, it must clearly and
20 conspicuously disclose such processing, as well as the manner in
21 which a consumer may exercise the right to opt out of such
22 processing, in a clear and conspicuous manner.

23 (c) Controllers shall not require a consumer to create a new
24 account in order to exercise a right, but a controller may require a
25 consumer to use an existing account to exercise the consumer's rights
26 under this chapter.

27 (2) *Purpose specification.* A controller's collection of personal
28 data must be limited to what is reasonably necessary in relation to
29 the specified and express purposes for which such data are processed,
30 as disclosed to the consumer.

31 (3) *Data minimization.* A controller's collection of personal data
32 must be adequate, relevant, and limited to what is reasonably
33 necessary in relation to the specified and express purposes for which
34 such data are processed, as disclosed to the consumer.

35 (4) *Avoid secondary use.* Except as provided in this chapter, a
36 controller may not process personal data for purposes that are not
37 reasonably necessary to, or compatible with, the specified and
38 express purposes for which such personal data are processed, as

1 disclosed to the consumer, unless the controller obtains the
2 consumer's consent.

3 (5) *Security*. A controller shall establish, implement, and
4 maintain reasonable administrative, technical, and physical data
5 security practices to protect the confidentiality, integrity, and
6 accessibility of personal data. Such data security practices shall be
7 appropriate to the volume and nature of the personal data at issue.

8 (6) *Nondiscrimination*. A controller may not process personal data
9 in violation of state and federal laws that prohibit unlawful
10 discrimination against consumers. A controller shall not discriminate
11 against a consumer for exercising any of the rights contained in this
12 chapter, including denying goods or services to the consumer,
13 charging different prices or rates for goods or services, and
14 providing a different level of quality of goods and services to the
15 consumer.

16 (7) *Sensitive data*. A controller may not process sensitive data
17 concerning a consumer without obtaining the consumer's consent, or,
18 in the case of the processing of personal data concerning a known
19 child, without obtaining consent from the child's parent or lawful
20 guardian.

21 (8) *Nonwaiver of consumer rights*. Any provision of a contract or
22 agreement of any kind that purports to waive or limit in any way a
23 consumer's rights under this chapter shall be deemed contrary to
24 public policy and shall be void and unenforceable.

25 NEW SECTION. **Sec. 9.** DATA PROTECTION ASSESSMENTS. (1)
26 Controllers must conduct, to the extent not previously conducted, a
27 data protection assessment of each of their processing activities
28 involving personal data and an additional data protection assessment
29 any time there is a change in processing that materially increases
30 the risk to consumers. Such data protection assessments must take
31 into account the type of personal data to be processed by the
32 controller, including the extent to which the personal data are
33 sensitive data or otherwise sensitive in nature, and the context in
34 which the personal data are to be processed.

35 (2) Data protection assessments conducted under subsection (1) of
36 this section must identify and weigh the benefits that may flow
37 directly and indirectly from the processing to the controller,
38 consumer, other stakeholders, and the public against the potential
39 risks to the rights of the consumer associated with such processing,

1 as mitigated by safeguards that can be employed by the controller to
2 reduce such risks. The use of deidentified data and the reasonable
3 expectations of consumers, as well as the context of the processing
4 and the relationship between the controller and the consumer whose
5 personal data will be processed, must be factored into this
6 assessment by the controller.

7 (3) If the data protection assessment conducted under subsection
8 (1) of this section determines that the potential risks of privacy
9 harm to consumers are substantial and outweigh the interests of the
10 controller, consumer, other stakeholders, and the public in
11 processing the personal data of the consumer, the controller may only
12 engage in such processing with the consent of the consumer or if
13 another exemption under this chapter applies. To the extent the
14 controller seeks consumer consent for processing, such consent must
15 be as easy to withdraw as to give.

16 (4) Processing shall be presumed to be permissible unless: (a) It
17 involves the processing of sensitive data; and (b) the risk of
18 processing cannot be reduced by appropriate administrative and
19 technical safeguards.

20 (5) The attorney general may request, in writing, that a
21 controller disclose any data protection assessment that is relevant
22 to an investigation conducted by the attorney general. The controller
23 must make a data protection assessment available to the attorney
24 general upon such a request. The attorney general may evaluate the
25 data protection assessments for compliance with the duties contained
26 in section 8 of this act and with other laws including, but not
27 limited to, chapter 19.86 RCW. Data protection assessments are
28 confidential and exempt from public inspection and copying under
29 chapter 42.56 RCW. The disclosure of a data protection assessment
30 pursuant to a request from the attorney general under this subsection
31 does not constitute a waiver of the attorney-client privilege or work
32 product protection with respect to the assessment and any information
33 contained in the assessment.

34 NEW SECTION. **Sec. 10.** LIMITATIONS AND APPLICABILITY. (1) The
35 obligations imposed on controllers or processors under this chapter
36 do not restrict a controller's or processor's ability to:

37 (a) Comply with federal, state, or local laws, rules, or
38 regulations;

1 (b) Comply with a civil, criminal, or regulatory inquiry,
2 investigation, subpoena, or summons by federal, state, local, or
3 other governmental authorities;

4 (c) Cooperate with law enforcement agencies concerning conduct or
5 activity that the controller or processor reasonably and in good
6 faith believes may violate federal, state, or local laws, rules, or
7 regulations;

8 (d) Investigate, establish, exercise, prepare for, or defend
9 legal claims;

10 (e) Provide a product or service specifically requested by a
11 consumer, perform a contract to which the consumer is a party, or
12 take steps at the request of the consumer prior to entering into a
13 contract;

14 (f) Protect the vital interests of the consumer or of another
15 natural person;

16 (g) Prevent, detect, protect against, or respond to security
17 incidents, identity theft, fraud, harassment, malicious or deceptive
18 activities, or any illegal activity; preserve the integrity or
19 security of systems; or investigate, report, or prosecute those
20 responsible for any such action;

21 (h) Process personal data for reasons of public interest in the
22 areas of public health, or generalizable scientific, historical, or
23 statistical research, but solely to the extent that the processing is
24 (i) subject to suitable and specific measures to safeguard the rights
25 of the consumer; and (ii) under the responsibility of a professional
26 subject to confidentiality obligations under federal, state, or local
27 law; or

28 (i) Assist another controller, processor, or third party with any
29 of the obligations under this subsection.

30 (2) The obligations imposed on controllers or processors under
31 this chapter do not restrict a controller's or processor's ability to
32 collect, use, or retain data to:

33 (a) Conduct internal research to improve, repair, or develop
34 products, services, or technology;

35 (b) Identify and repair technical errors that impair existing or
36 intended functionality; or

37 (c) Perform internal operations that are reasonably aligned with
38 the expectations of the consumer based on the consumer's existing
39 relationship with the controller, or are otherwise compatible with
40 processing in furtherance of the provision of a product or service

1 specifically requested by a consumer or the performance of a contract
2 to which the consumer is a party.

3 (3) The obligations imposed on controllers or processors under
4 this chapter do not apply where compliance by the controller or
5 processor with this chapter would violate an evidentiary privilege
6 under Washington law and do not prevent a controller or processor
7 from providing personal data concerning a consumer to a person
8 covered by an evidentiary privilege under Washington law as part of a
9 privileged communication.

10 (4) A controller or processor that discloses personal data to a
11 third-party controller or processor in compliance with the
12 requirements of this chapter is not in violation of this chapter if
13 the recipient processes such personal data in violation of this
14 chapter, provided that, at the time of disclosing the personal data,
15 the disclosing controller or processor did not have actual knowledge
16 that the recipient intended to commit a violation. A third-party
17 controller or processor receiving personal data from a controller or
18 processor in compliance with the requirements of this chapter is
19 likewise not in violation of this chapter for the obligations of the
20 controller or processor from which it receives such personal data.

21 (5) Obligations imposed on controllers and processors under this
22 chapter shall not:

23 (a) Adversely affect the rights or freedoms of any persons, such
24 as exercising the right of free speech pursuant to the First
25 Amendment to the United States Constitution; or

26 (b) Apply to the processing of personal data by a natural person
27 in the course of a purely personal or household activity.

28 (6) Personal data that are processed by a controller pursuant to
29 this section must not be processed for any purpose other than those
30 expressly listed in this section. Personal data that are processed by
31 a controller pursuant to this section may be processed solely to the
32 extent that such processing is: (i) Necessary, reasonable, and
33 proportionate to the specific purpose or purposes listed in this
34 section; and (ii) adequate, relevant, and limited to what is
35 necessary in relation to the specific purpose or purposes listed in
36 this section. Furthermore, personal data that are collected, used, or
37 retained pursuant to subsection (2) of this section must, insofar as
38 possible, taking into account the nature and purpose or purposes of
39 such collection, use, or retention, be subjected to reasonable
40 administrative, technical, and physical measures to protect the

1 confidentiality, integrity, and accessibility of the personal data,
2 and to reduce reasonably foreseeable risks of harm to consumers
3 relating to such collection, use, or retention of personal data.

4 (7) If a controller processes personal data pursuant to an
5 exemption in this section, the controller bears the burden of
6 demonstrating that such processing qualifies for the exemption and
7 complies with the requirements in subsection (6) of this section.

8 (8) Processing personal data solely for the purposes expressly
9 identified in subsection (1)(a) through (d) or (g) of this section
10 does not, by itself, make an entity a controller with respect to such
11 processing.

12 NEW SECTION. **Sec. 11.** LIABILITY. (1) Any violation of this
13 chapter shall not serve as the basis for, or be subject to, a private
14 right of action under this chapter or under any other law. This does
15 not relieve any party from any duties or obligations imposed, or to
16 alter any independent rights that consumers have under other laws,
17 chapter 19.86 RCW, the Washington state Constitution, or the United
18 States Constitution.

19 (2) Where more than one controller or processor, or both a
20 controller and a processor, involved in the same processing, is in
21 violation of this chapter, the liability must be allocated among the
22 parties according to principles of comparative fault, unless such
23 liability is otherwise allocated by contract among the parties.

24 NEW SECTION. **Sec. 12.** ENFORCEMENT. (1) The attorney general has
25 exclusive authority to enforce this chapter by bringing an action in
26 the name of the state, or as *parens patriae* on behalf of persons
27 residing in the state.

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

31 NEW SECTION. **Sec. 13.** CONSUMER PRIVACY ACCOUNT. The consumer
32 privacy account is created in the state treasury. All receipts from
33 the imposition of civil penalties under this chapter must be
34 deposited into the account except for the recovery of costs and
35 attorneys' fees accrued by the attorney general in enforcing this
36 chapter. Moneys in the account may be spent only after appropriation.
37 Moneys in the account may only be used for the purposes of the office

1 of privacy and data protection as created under RCW 43.105.369, and
2 may not be used to supplant general fund appropriations to the
3 agency.

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

8 NEW SECTION. **Sec. 15.** PRIVACY OFFICE STUDY. (1) The state
9 office of privacy and data protection shall conduct a study on the
10 development of technology, such as a browser setting, browser
11 extension, or global device setting, indicating a consumer's
12 affirmative, freely given, and unambiguous choice to opt out of the
13 processing of personal data for the purposes of targeted advertising,
14 the sale of personal data, or profiling in furtherance of decisions
15 that produce legal effects concerning consumers or similarly
16 significant effects concerning consumers.

17 (2) The office of privacy and data protection shall submit a
18 report of its findings and recommendations to the governor and the
19 appropriate committees of the legislature by October 31, 2021.

20 NEW SECTION. **Sec. 16.** ATTORNEY GENERAL REPORT. (1) The attorney
21 general shall compile a report evaluating the liability and
22 enforcement provisions of this chapter including, but not limited to,
23 the effectiveness of its efforts to enforce this chapter, and any
24 recommendations for changes to such provisions.

25 (2) The attorney general shall submit the report to the governor
26 and the appropriate committees of the legislature by July 1, 2022.

27 NEW SECTION. **Sec. 17.** JOINT RESEARCH INITIATIVES. The governor
28 may enter into agreements with the governments of the Canadian
29 province of British Columbia and the states of California and Oregon
30 for the purpose of sharing personal data or personal information by
31 public bodies across national and state borders to enable
32 collaboration for joint data-driven research initiatives. Such
33 agreements must provide reciprocal protections that the respective
34 governments agree appropriately safeguard the data.

1 NEW SECTION. **Sec. 18.** FACIAL RECOGNITION. (1) Processors that
2 provide facial recognition services must make available an
3 application programming interface or other technical capability,
4 chosen by the processor, to enable controllers or third parties to
5 conduct legitimate, independent, and reasonable tests of those facial
6 recognition services for accuracy and unfair performance differences
7 across distinct subpopulations. Such subpopulations may be defined by
8 race, skin tone, ethnicity, gender, age, disability status, or other
9 protected characteristic that is objectively determinable or self-
10 identified by the individuals portrayed in the testing dataset. If
11 the results of that independent testing identify material unfair
12 performance differences across subpopulations and those results are
13 disclosed directly to the processor, who, acting reasonably,
14 determines that the methodology and results of that testing are
15 valid, then the processor must develop and implement a plan to
16 address the identified performance differences. Nothing in this
17 subsection prevents a processor from prohibiting the use of the
18 processor's facial recognition service by a competitor for
19 competitive purposes.

20 (2) Processors that provide facial recognition services must
21 provide documentation that includes general information that:

22 (a) Explains the capabilities and limitations of the services in
23 plain language; and

24 (b) Enables testing of the services in accordance with this
25 section.

26 (3) Processors that provide facial recognition services must
27 prohibit, in the contract required by section 5 of this act, the use
28 of facial recognition services by controllers to unlawfully
29 discriminate under federal or state law against individual consumers
30 or groups of consumers.

31 (4) Controllers must provide a conspicuous and contextually
32 appropriate notice whenever a facial recognition service is deployed
33 in a physical premise open to the public that includes, at minimum,
34 the following:

35 (a) The purpose or purposes for which the facial recognition
36 service is deployed; and

37 (b) Information about where consumers can obtain additional
38 information about the facial recognition service including, but not
39 limited to, a link to any applicable online notice, terms, or policy
40 that provides information about where and how consumers can exercise

1 any rights that they have with respect to the facial recognition
2 service.

3 (5) Controllers must obtain consent from a consumer prior to
4 enrolling an image of that consumer in a facial recognition service
5 used in a physical premises open to the public.

6 (6) Except as provided in subsection (5) of this section,
7 controllers may enroll an image of a consumer in a facial recognition
8 service for a security or safety purpose without first obtaining
9 consent from that consumer, provided that all of the following
10 requirements are met:

11 (a) The controller must hold a reasonable suspicion, based on a
12 specific incident, that the consumer has engaged in criminal
13 activity, which includes, but is not limited to, shoplifting, fraud,
14 stalking, or domestic violence;

15 (b) Any database used by a facial recognition service for
16 identification, verification, or persistent tracking of consumers for
17 a security or safety purpose must be used solely for that purpose and
18 maintained separately from any other databases maintained by the
19 controller;

20 (c) The controller must review any such database used by the
21 controller's facial recognition service no less than biannually to
22 remove facial templates of consumers whom the controller no longer
23 holds a reasonable suspicion that they have engaged in criminal
24 activity or that are more than three years old; and

25 (d) The controller must establish an internal process whereby a
26 consumer may correct or challenge the decision to enroll the image of
27 the consumer in a facial recognition service for a security or safety
28 purpose.

29 (7) Controllers using a facial recognition service to make
30 decisions that produce legal effects on consumers or similarly
31 significant effects on consumers must ensure that those decisions are
32 subject to meaningful human review.

33 (8) Prior to deploying a facial recognition service in the
34 context in which it will be used, controllers must test the facial
35 recognition service in operational conditions. Controllers must take
36 commercially reasonable steps to ensure best quality results by
37 following all reasonable guidance provided by the developer of the
38 facial recognition service.

39 (9) Controllers using a facial recognition service must conduct
40 periodic training of all individuals that operate a facial

1 recognition service or that process personal data obtained from the
2 use of facial recognition services. Such training shall include, but
3 not be limited to, coverage of:

4 (a) The capabilities and limitations of the facial recognition
5 service;

6 (b) Procedures to interpret and act on the output of the facial
7 recognition service; and

8 (c) The meaningful human review requirement for decisions that
9 produce legal effects on consumers or similarly significant effects
10 on consumers, to the extent applicable to the deployment context.

11 (10) Controllers shall not knowingly disclose personal data
12 obtained from a facial recognition service to a law enforcement
13 agency, except when such disclosure is:

14 (a) Pursuant to the consent of the consumer to whom the personal
15 data relates;

16 (b) Required by federal, state, or local law in response to a
17 court order, court-ordered warrant, or subpoena or summons issued by
18 a judicial officer or grand jury;

19 (c) Necessary to prevent or respond to an emergency involving
20 danger of death or serious physical injury to any person, upon a good
21 faith belief by the controller; or

22 (d) To the national center for missing and exploited children, in
23 connection with a report submitted thereto under Title 18 U.S.C. Sec.
24 2258A.

25 (11) Controllers and processors that deploy a facial recognition
26 service must respond to a consumer request to exercise the rights
27 specified in section 6 of this act and must fulfill the duties
28 identified in section 8 of this act.

29 NEW SECTION. **Sec. 19.** Sections 1 through 18 and 20 of this act
30 constitute a new chapter in Title 19 RCW.

31 NEW SECTION. **Sec. 20.** Except for section 15 of this act, this
32 act takes effect July 31, 2021.

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