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**SENATE BILL 5351**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Dhingra, Billig, Boehnke, Hasegawa, Hunt, Keiser, Kuderer, Lovelett, Lovick, Nguyen, Nobles, Pedersen, Randall, Rivers, Rolfes, Salomon, Shewmake, Stanford, Trudeau, Valdez, C. Wilson, and J. Wilson; by request of Attorney General

Read first time 01/12/23. Referred to Committee on Law & Justice.

1 AN ACT Relating to the collection, sharing, and selling of  
2 consumer health data; and adding a new chapter to Title 19 RCW.

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

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
5 Washington my health my data act.

6 NEW SECTION. **Sec. 2.** (1) The legislature finds that the people  
7 of Washington regard their privacy as a fundamental right and an  
8 essential element of their individual freedom. Washington's  
9 Constitution explicitly provides the right to privacy. Fundamental  
10 privacy rights have long been and continue to be integral to  
11 protecting Washingtonians and to safeguarding our democratic  
12 republic.

13 (2) Information related to an individual's health conditions or  
14 attempts to obtain health care services is among the most personal  
15 and sensitive categories of data collected. Washingtonians expect  
16 that their health data is protected under laws like the health  
17 information portability and accountability act (HIPAA). However,  
18 HIPAA only covers health data collected by specific health care  
19 entities, including most health care providers. Health data collected  
20 by noncovered entities, including certain apps and websites, are not

1 afforded the same protections. This act works to close the gap  
2 between consumer knowledge and industry practice by providing  
3 stronger privacy protections for all Washington consumers' health  
4 data.

5 (3) With this act, the legislature intends to provide heightened  
6 protections for Washingtonian's health data by: Requiring additional  
7 disclosures and consumer consent regarding the collection, sharing,  
8 and use of such information; empowering consumers with the right to  
9 have their health data deleted; prohibiting the selling of consumer  
10 health data; and making it unlawful to utilize a geofence around a  
11 facility that provides health care services.

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

15 (1) "Abortion" means the termination of a pregnancy for purposes  
16 other than producing a live birth.

17 (2) "Affiliate" means a legal entity that shares common branding  
18 with another legal entity and controls, is controlled by, or is under  
19 common control with another legal entity. For the purposes of this  
20 definition, "control" or "controlled" means:

21 (a) Ownership of, or the power to vote, more than 50 percent of  
22 the outstanding shares of any class of voting security of a company;

23 (b) Control in any manner over the election of a majority of the  
24 directors or of individuals exercising similar functions; or

25 (c) The power to exercise controlling influence over the  
26 management of a company.

27 (3) "Biometric data" means data generated from the measurement or  
28 technological processing of an individual's physiological,  
29 biological, or behavioral characteristics that can be used  
30 individually or in combination with other data to identify a  
31 consumer. Biometric data includes, but is not limited to:

32 (a) Imagery of the iris, retina, fingerprint, face, hand, palm,  
33 vein patterns, and voice recordings, from which an identifier  
34 template can be extracted; or

35 (b) Keystroke patterns or rhythms, gait patterns or rhythms, and  
36 sleep, health, or exercise data that contain identifying information.

37 (4) "Collect" means to buy, rent, access, retain, receive,  
38 acquire, infer, derive, or otherwise process consumer health data in  
39 any manner.

1 (5) (a) "Consent" means a clear affirmative act by a consumer that  
2 openly communicates a consumer's freely given, informed, opt-in,  
3 voluntary, specific, and unambiguous written consent, which may  
4 include written consent provided by electronic means.

5 (b) "Consent" cannot be obtained by:

6 (i) A consumer's acceptance of a general or broad terms of use  
7 agreement or a similar document that contains descriptions of  
8 personal data processing along with other unrelated information;

9 (ii) A consumer hovering over, muting, pausing, or closing a  
10 given piece of content; or

11 (iii) A consumer's agreement obtained through the use of  
12 deceptive designs.

13 (6) "Consumer" means (a) a natural person who is a Washington  
14 resident; or (b) a natural person whose consumer health data is  
15 collected in Washington. "Consumer" means a natural person who acts  
16 only in an individual or household context, however identified,  
17 including by any unique identifier. "Consumer" does not include an  
18 individual acting in an employment context.

19 (7) (a) "Consumer health data" means personal information relating  
20 to the past, present, or future physical or mental health of a  
21 consumer including, but not limited to, any personal information  
22 relating to:

23 (i) Individual health conditions, treatment, status, diseases, or  
24 diagnoses;

25 (ii) Social, psychological, behavioral, and medical  
26 interventions;

27 (iii) Health-related surgeries or procedures;

28 (iv) Use or purchase of medication;

29 (v) Bodily functions, vital signs, symptoms, or measurements of  
30 the information described in this subsection;

31 (vi) Diagnoses or diagnostic testing, treatment, or medication;

32 (vii) Efforts to research or obtain health services or supplies;

33 (viii) Gender-affirming care information;

34 (ix) Reproductive or sexual health information;

35 (x) Biometric data related to information described in this  
36 subsection (7) (a);

37 (xi) Genetic data related to information described in this  
38 subsection (7) (a);

1 (xii) Location information that could reasonably indicate a  
2 consumer's attempt to acquire or receive health services or supplies;  
3 or

4 (xiii) Any information described in (a)(i) through (xii) of this  
5 subsection that is derived or extrapolated from nonhealth information  
6 (such as proxy, derivative, inferred, or emergent data by any means,  
7 including algorithms or machine learning).

8 (b) "Consumer health data" does not include personal information  
9 that is used to engage in public or peer-reviewed scientific,  
10 historical, or statistical research in the public interest that  
11 adheres to all other applicable ethics and privacy laws and is  
12 approved, monitored, and governed by an institutional review board,  
13 human subjects research ethics review board, or a similar independent  
14 oversight entity that determines that the regulated entity has  
15 implemented reasonable safeguards to mitigate privacy risks  
16 associated with research, including any risks associated with  
17 reidentification.

18 (8) "Deceptive design" means a user interface designed or  
19 manipulated with the potential effect of subverting or impairing user  
20 autonomy, decision making, or choice.

21 (9) "Deidentified data" means data that cannot reasonably be used  
22 to infer information about, or otherwise be linked to, an identified  
23 or identifiable individual, or a device linked to such individual, if  
24 the regulated entity that possesses such data (a) takes reasonable  
25 measures to ensure that such data cannot be associated with an  
26 individual; (b) publicly commits to process such data only in a  
27 deidentified fashion and not attempt to reidentify such data; and (c)  
28 contractually obligates any recipients of such data to satisfy the  
29 criteria set forth in (a) and (b) of this subsection.

30 (10) "Gender-affirming care information" means personal  
31 information relating to seeking or obtaining past, present, or future  
32 gender-affirming care services. "Gender-affirming care information"  
33 includes, but is not limited to:

34 (a) Location information that could reasonably indicate a  
35 consumer's attempt to acquire or receive gender-affirming care  
36 services;

37 (b) Efforts to research or obtain gender-affirming care services;  
38 or

1 (c) Any gender-affirming care information that is derived,  
2 extrapolated, or inferred, including from nonhealth information, such  
3 as proxy, derivative, inferred, emergent, or algorithmic data.

4 (11) "Gender-affirming care services" means health services or  
5 products that support and affirm an individual's gender identity  
6 including, but not limited to, social, psychological, behavioral,  
7 cosmetic, medical, or surgical interventions. "Gender-affirming care  
8 services" includes, but is not limited to, treatments for gender  
9 dysphoria, gender-affirming hormone therapy, and gender-affirming  
10 surgical procedures.

11 (12) "Genetic data" means any data, regardless of its format,  
12 that concerns a consumer's genetic characteristics. "Genetic data"  
13 includes, but is not limited to:

14 (a) Raw sequence data that result from the sequencing of a  
15 consumer's complete extracted deoxyribonucleic acid (DNA) or a  
16 portion of the extracted DNA;

17 (b) Genotypic and phenotypic information that results from  
18 analyzing the raw sequence data; and

19 (c) Self-reported health data that a consumer submits to a  
20 regulated entity and that is analyzed in connection with consumer's  
21 raw sequence data.

22 (13) "Geofence" means technology that uses global positioning  
23 coordinates, cell tower connectivity, cellular data, radio frequency  
24 identification, Wifi data, and/or any other form of location  
25 detection to establish a virtual boundary around a specific physical  
26 location.

27 (14) "Health care services" means any service provided to a  
28 person to assess, measure, improve, or learn about a person's health,  
29 including but not limited to:

30 (a) Individual health conditions, status, diseases, or diagnoses;

31 (b) Social, psychological, behavioral, and medical interventions;

32 (c) Health-related surgeries or procedures;

33 (d) Use or purchase of medication;

34 (e) Bodily functions, vital signs, symptoms, or measurements of  
35 the information described in this subsection;

36 (f) Diagnoses or diagnostic testing, treatment, or medication;

37 (g) Reproductive health care services; or

38 (h) Gender-affirming care services.

39 (15) "Homepage" means the introductory page of an internet  
40 website and any internet webpage where personal information is

1 collected. In the case of an online service, such as a mobile  
2 application, homepage means the application's platform page or  
3 download page, and a link within the application, such as from the  
4 application configuration, "about," "information," or settings page.

5 (16) "Person" shall include, where applicable, natural persons,  
6 corporations, trusts, unincorporated associations, and partnerships.

7 (17) (a) "Personal information" means information that identifies,  
8 relates to, describes, or is reasonably capable of being associated  
9 or linked, directly or indirectly, with a particular consumer.  
10 "Personal information" includes, but is not limited to, data  
11 associated with a persistent unique identifier, such as a cookie ID,  
12 an IP address, a device identifier, or any other form of persistent  
13 unique identifier.

14 (b) "Personal information" does not include publicly available  
15 information. For purposes of this subsection, "publicly available"  
16 means information that is lawfully made available from federal,  
17 state, or local government records. Any biometric data collected  
18 about a consumer by a business without the consumer's knowledge is  
19 not publicly available information.

20 (c) "Personal information" does not include deidentified data.

21 (18) "Process" or "processing" means any operation or set of  
22 operations performed on consumer health data.

23 (19) "Regulated entity" means any legal entity that (a) conducts  
24 business in Washington, or produces or provides products or services  
25 that are targeted to consumers in Washington; (b) collects, shares,  
26 or sells consumer health data; and (c) determines the purpose and  
27 means of the processing of consumer health data. "Regulated entity"  
28 does not mean government agencies or tribal nations.

29 (20) "Reproductive or sexual health information" means personal  
30 information relating to seeking or obtaining past, present, or future  
31 reproductive or sexual health services. "Reproductive or sexual  
32 health information" includes, but is not limited to:

33 (a) Location information that could reasonably indicate a  
34 consumer's attempt to acquire or receive reproductive or sexual  
35 health services;

36 (b) Efforts to research or obtain reproductive or sexual health  
37 services; or

38 (c) Any reproductive or sexual health information that is  
39 derived, extrapolated, or inferred, including from nonhealth

1 information (such as proxy, derivative, inferred, emergent, or  
2 algorithmic data).

3 (21) "Reproductive or sexual health services" means health  
4 services or products that support or relate to an individual's  
5 reproductive system or sexual well-being, including but not limited  
6 to:

7 (a) Individual health conditions, status, diseases, or diagnoses;

8 (b) Social, psychological, behavioral, and medical interventions;

9 (c) Health-related surgeries or procedures including, but not  
10 limited to, abortions;

11 (d) Use or purchase of medication including, but not limited to,  
12 medications for the purposes of abortion;

13 (e) Bodily functions, vital signs, symptoms, or measurements of  
14 the information described in this subsection;

15 (f) Diagnoses or diagnostic testing, treatment, or medication;  
16 and

17 (g) Medical or nonmedical services related to and provided in  
18 conjunction with an abortion, including but not limited to associated  
19 diagnostics, counseling, supplies, and follow-up services.

20 (22)(a) "Sell" or "sale" means the sharing of consumer health  
21 data for monetary or other valuable consideration.

22 (b) "Sell" or "sale" does not include the sharing of consumer  
23 health data for monetary or other valuable consideration:

24 (i) To a third party as an asset that is part of a merger,  
25 acquisition, bankruptcy, or other transaction in which the third  
26 party assumes control of all or part of the regulated entity's assets  
27 that shall comply with the requirements and obligations in this  
28 chapter;

29 (ii) By a natural person selling their own consumer health data  
30 pursuant to a written contract of sale with a third party; or

31 (iii) By a regulated entity to a service provider when such  
32 sharing is consistent with the purpose for which the consumer health  
33 data was collected and disclosed to the consumer.

34 (23) "Service provider" means a person that processes consumer  
35 health data on behalf of a regulated entity.

36 (24)(a) "Share" or "sharing" means to release, disclose,  
37 disseminate, divulge, make available, provide access to, license, or  
38 otherwise communicate orally, in writing, or by electronic or other  
39 means, consumer health data by a regulated entity to a third party or  
40 affiliate.

1 (b) The term "share" or "sharing" does not include:

2 (i) The disclosure of consumer health data by a regulated entity  
3 to a service provider when such sharing is consistent with the  
4 purpose for which the consumer health data was collected and  
5 disclosed to the consumer;

6 (ii) The disclosure of consumer health data to a third party with  
7 whom the consumer has a direct relationship when: (A) The disclosure  
8 is for purposes of providing a product or service requested by the  
9 consumer; (B) the regulated entity maintains control and ownership of  
10 the data; and (C) the third party uses the consumer health data only  
11 at direction from the regulated entity and consistent with the  
12 purpose for which it was collected and disclosed to the consumer; or

13 (iii) The disclosure or transfer of personal data to a third  
14 party as an asset that is part of a merger, acquisition, bankruptcy,  
15 or other transaction in which the third party assumes control of all  
16 or part of the regulated entity's assets and shall comply with the  
17 requirements and obligations in this chapter.

18 (25) "Third party" means an entity other than a consumer,  
19 regulated entity, service provider, or affiliate of the regulated  
20 entity.

21 NEW SECTION. **Sec. 4.** (1) A regulated entity shall maintain a  
22 consumer health data privacy policy that clearly and conspicuously  
23 discloses:

24 (a) The specific types of consumer health data collected and the  
25 purpose for which the data is collected, including the specific ways  
26 in which it will be used;

27 (b) The sources from which the consumer health data is collected;

28 (c) The specific consumer health data that is shared;

29 (d) A list of third parties and affiliates with whom the  
30 regulated entity shares the consumer health data, including an active  
31 email address or other online mechanism that the consumer may use to  
32 contact these third parties and affiliates; and

33 (e) How a consumer can exercise the rights provided in section 6  
34 of this act.

35 (2) A regulated entity shall prominently publish its consumer  
36 health data privacy policy on its homepage.

37 (3) A regulated entity may not collect, use, or share additional  
38 categories of consumer health data not disclosed in the consumer  
39 health data privacy policy without first disclosing the additional



1 categories and obtaining the consumer's affirmative consent prior to  
2 the collection, use, or sharing of such consumer health data.

3 (4) A regulated entity may not collect, use, or share consumer  
4 health data for additional purposes not disclosed in the consumer  
5 health data privacy policy without first disclosing the additional  
6 purposes and obtaining the consumer's affirmative consent prior to  
7 the collection, use, or sharing of such consumer health data.

8 (5) It is a violation of this chapter for a regulated entity to  
9 contract with a service provider to process consumer health data in a  
10 manner that is inconsistent with the regulated entity's consumer  
11 health data privacy policy.

12 NEW SECTION. **Sec. 5.** (1) A regulated entity may not collect any  
13 consumer health data except:

14 (a) With consent from the consumer for such collection for a  
15 specified purpose; or

16 (b) To the extent strictly necessary to provide a product or  
17 service that the consumer to whom such consumer health data relates  
18 has requested from such regulated entity.

19 (2) A regulated entity may not share any consumer health data  
20 except:

21 (a) With consent from the consumer for such sharing that is  
22 separate and distinct from the consent obtained to collect consumer  
23 health data; or

24 (b) To the extent strictly necessary to provide a product or  
25 service that the consumer to whom such consumer health data relates  
26 has requested from such regulated entity.

27 (3) Consent required under this section must be obtained prior to  
28 the collection or sharing, as applicable, of any consumer health  
29 data, and the request for consent must clearly and conspicuously  
30 disclose: (a) The categories of consumer health data collected or  
31 shared; (b) the purpose of the collection or sharing of the consumer  
32 health data, including the specific ways in which it will be used;  
33 (c) the entities with whom the consumer health data is shared; and  
34 (d) how the consumer can withdraw consent from future collection or  
35 sharing of the consumer's health data.

36 (4) A regulated entity may not discriminate against a consumer  
37 for exercising any rights included in this chapter.

1        NEW SECTION.    **Sec. 6.**    (1) A consumer has the right to confirm  
2 whether a regulated entity is collecting or sharing consumer health  
3 data concerning the consumer and to access such data.

4        (2) A consumer has the right to confirm that a regulated entity  
5 has not sold consumer health data concerning the consumer.

6        (3) A consumer has the right to withdraw consent from the  
7 regulated entity's collection and sharing of consumer health data  
8 concerning the consumer.

9        (4) A consumer has the right to have consumer health data  
10 concerning the consumer deleted and may exercise that right by  
11 informing the regulated entity of the consumer's request for  
12 deletion.

13        (a) A regulated entity that receives a consumer's request to  
14 delete any consumer health data concerning the consumer shall without  
15 unreasonable delay and no more than 30 calendar days from receiving  
16 the deletion request:

17        (i) Delete the consumer health data from its records, including  
18 from all parts of the regulated entity's network or backup systems;  
19 and

20        (ii) Notify all affiliates, service providers, contractors, and  
21 other third parties with whom the regulated entity has shared  
22 consumer health data of the deletion request.

23        (b) All affiliates, service providers, contractors, and other  
24 third parties that receive notice of a consumer's deletion request  
25 shall honor the consumer's deletion request and delete the consumer  
26 health data from its records, including from all parts of its network  
27 or backup systems.

28        (5) A consumer may exercise the rights set forth in this chapter  
29 by submitting a request, at any time, to a regulated entity. Such a  
30 request may be made by contacting the regulated entity through the  
31 manner included in its consumer health data privacy policy.

32        NEW SECTION.    **Sec. 7.**    (1) A regulated entity shall restrict  
33 access to consumer health data by the employees, service providers,  
34 and contractors of such regulated entity to only those employees,  
35 service providers, and contractors for which access is necessary to  
36 further the purposes for which the consumer provided consent or where  
37 strictly necessary to provide a product or service that the consumer  
38 to whom such data and information relates has requested from such  
39 regulated entity.

1 (2) A regulated entity shall establish, implement, and maintain  
2 administrative, technical, and physical data security practices that,  
3 at a minimum, satisfy reasonable standard of care within the  
4 regulated entity's industry to protect the confidentiality,  
5 integrity, and accessibility of consumer health data appropriate to  
6 the volume and nature of the personal data at issue.

7 NEW SECTION. **Sec. 8.** (1)(a) A service provider may process  
8 consumer health data only pursuant to a binding contract between the  
9 service provider and the regulated entity that sets forth the  
10 processing instructions and limit the actions the service provider  
11 may take with respect to the consumer health data it processes on  
12 behalf of the regulated entity.

13 (b) A service provider may process consumer health data only in a  
14 manner that is consistent with the binding instructions set forth in  
15 the contract with the regulated entity.

16 (2) A service provider shall assist the regulated entity by  
17 appropriate technical and organizational measures, insofar as this is  
18 possible, in fulfilling the regulated entity's obligations under this  
19 chapter.

20 (3) If a service provider fails to adhere to the regulated  
21 entity's instructions or processes consumer health data in a manner  
22 that is outside the scope of the service provider's contract with the  
23 regulated entity, the service provider is considered a regulated  
24 entity and is subject to all the requirements of this chapter.

25 NEW SECTION. **Sec. 9.** It is unlawful for any person including,  
26 but not limited to, regulated entities or service providers, to sell  
27 consumer health data.

28 NEW SECTION. **Sec. 10.** It is unlawful for any person to  
29 implement a geofence around any entity that provides in-person health  
30 care services where such geofence is used to identify, track, collect  
31 data from, or send notifications or messages to a consumer that  
32 enters the virtual perimeter.

33 NEW SECTION. **Sec. 11.** The legislature finds that the practices  
34 covered by this chapter are matters vitally affecting the public  
35 interest for the purpose of applying the consumer protection act,  
36 chapter 19.86 RCW. A violation of this chapter is not reasonable in

1 relation to the development and preservation of business, and is an  
2 unfair or deceptive act in trade or commerce and an unfair method of  
3 competition for the purpose of applying the consumer protection act,  
4 chapter 19.86 RCW.

5 NEW SECTION. **Sec. 12.** (1) This chapter does not apply to:

6 (a) Protected health information, or information treated like  
7 protected health information, collected, used, or disclosed by  
8 covered entities and business associates when: (i) The protected  
9 health information is collected, used, or disclosed in accordance  
10 with the federal health insurance portability and accountability act  
11 of 1996 and the health information technology for economic and  
12 clinical health act, 45 C.F.R. Parts 160 and 164, and its  
13 implementing regulations; and (ii) the protected health information  
14 is afforded all the privacy protections and security safeguards of  
15 those federal laws and their implementing regulations. For the  
16 purpose of this subsection (1), "protected health information,"  
17 "covered entity," and "business associate" have the same meaning as  
18 in the federal health insurance portability and accountability act of  
19 1996 and its implementing regulations;

20 (b) Patient identifying information collected, used, or disclosed  
21 in accordance with 42 C.F.R. Part 2, established pursuant to 42  
22 U.S.C. Sec. 290dd-2; or

23 (c) Health care information collected, used, or disclosed in  
24 accordance with chapter 70.02 RCW.

25 (2) Nothing in this chapter shall be construed to prohibit  
26 disclosure as required under chapters 26.44 and 74.34 RCW.

27 NEW SECTION. **Sec. 13.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 14.** Sections 1 through 12 of this act  
32 constitute a new chapter in Title 19 RCW.

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