

By: Hughes

S.B. No. 485

A BILL TO BE ENTITLED

AN ACT

relating to the capture of a biometric identifier by a governmental entity; providing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 560.001, Government Code, is amended to read as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

(1) "Biometric identifier" means an ear, [a] retina, or iris scan, a fingerprint, a voiceprint, or a record of an individual's hand or face geometry, heartbeat, gait, or vascular pattern.

(2) "Governmental entity" means this state or an agency or political subdivision of this state ~~[body" has the meaning assigned by Section 552.003, except that the term includes each entity within or created by the judicial branch of state government].~~

SECTION 2. Chapter 560, Government Code, is amended by adding Section 560.0015 to read as follows:

Sec. 560.0015. CAPTURE OF BIOMETRIC IDENTIFIER. (a) Except as provided by Subsection (b), a governmental entity may not capture an individual's biometric identifier without the individual's voluntary consent. Except as provided by Subsection (c), a governmental entity may not retain or use an individual's biometric identifier that is captured using a photograph, video

1 recording, or audio recording of the individual.

2 (b) A governmental entity may capture an individual's
3 biometric identifier without the individual's consent if the
4 capture:

5 (1) occurs at a location not more than 10 miles from an
6 international border;

7 (2) is authorized under a warrant;

8 (3) occurs during the investigation of an alleged
9 crime and the biometric identifier is:

10 (A) a fingerprint; or

11 (B) from an individual who is arrested for,
12 charged with, or convicted of the crime; or

13 (4) is a fingerprint, heartbeat, or vascular pattern
14 captured by a health care provider or health care facility that
15 captures, possesses, or requires the biometric identifier while
16 providing health care services to the individual on the request of
17 the governmental entity.

18 (c) A governmental entity may retain and use an individual's
19 biometric identifier that is captured using a photograph, video
20 recording, or audio recording of the individual if:

21 (1) the photograph or recording is captured in
22 relation to a time, place, or event connected to a criminal
23 investigation; and

24 (2) the governmental entity destroys the record of the
25 biometric identifier on completion of the entity's use of the
26 biometric identifier for:

27 (A) the criminal investigation; or

1 (B) the trial or appeal of the prosecution of an
2 alleged crime charged as a result of the investigation.

3 SECTION 3. Section 560.002, Government Code, is amended to
4 read as follows:

5 Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A
6 governmental entity [~~body~~] that possesses a biometric identifier of
7 an individual:

8 (1) may not sell, lease, or otherwise disclose the
9 biometric identifier to another person unless:

10 (A) the individual consents to the disclosure;

11 (B) the disclosure is required or permitted by a
12 federal statute or by a state statute other than Chapter 552; or

13 (C) the disclosure is made by or to a law
14 enforcement agency for a law enforcement purpose; and

15 (2) shall store, transmit, and protect from disclosure
16 the biometric identifier using reasonable care and in a manner that
17 is the same as or more protective than the manner in which the
18 governmental entity [~~body~~] stores, transmits, and protects its
19 other confidential information.

20 SECTION 4. Chapter 560, Government Code, is amended by
21 adding Section 560.0025 to read as follows:

22 Sec. 560.0025. DESTRUCTION AFTER ACQUITTAL OR DISMISSAL OF
23 CRIMINAL CHARGE. A governmental entity that captures an
24 individual's biometric identifier based on an exception under
25 Section 560.0015(b)(2) or (3) shall destroy all records of the
26 biometric identifier if the biometric identifier was collected:

27 (1) under a warrant issued in the investigation of an

1 alleged crime and charges against the individual are not filed; or
2 (2) exclusively in connection with the investigation
3 of a crime for which:

4 (A) the individual was subsequently acquitted;
5 or

6 (B) all charges against the individual resulting
7 from the investigation are dismissed.

8 SECTION 5. Section 560.003, Government Code, is amended to
9 read as follows:

10 Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric
11 identifier in the possession of a governmental entity [~~body~~] is
12 exempt from disclosure under Chapter 552.

13 SECTION 6. Chapter 560, Government Code, is amended by
14 adding Sections 560.004 and 560.005 to read as follows:

15 Sec. 560.004. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
16 attorney general may institute an action for injunctive relief
17 against a person who appears to be in violation of or threatening to
18 violate this chapter.

19 (b) In an injunction issued under this section, a court may
20 include reasonable requirements to prevent further violations of
21 this chapter.

22 (c) In addition to the injunctive relief provided by
23 Subsection (a), the attorney general may institute an action for
24 civil penalties against a person for a violation of this chapter. A
25 civil penalty assessed under this section may not be less than
26 \$1,000 for each violation.

27 (d) Each day a violation occurs or continues to occur is a

1 separate violation.

2 (e) The attorney general shall file an action under this
3 section in a district court in Travis County or the county in which
4 the violation occurred.

5 (f) The attorney general may recover reasonable expenses
6 incurred in obtaining injunctive relief or a civil penalty under
7 this section, including court costs, attorney's fees,
8 investigative costs, witness fees, and deposition expenses.

9 (g) A civil penalty recovered in an action by the attorney
10 general under this section shall be deposited in the state
11 treasury.

12 Sec. 560.005. WAIVER OF SOVEREIGN OR GOVERNMENTAL IMMUNITY.
13 Sovereign or governmental immunity, as applicable, of a
14 governmental entity to suit and from liability is waived and
15 abolished to the extent of liability created by this chapter.

16 SECTION 7. The changes in law made by this Act apply only to
17 a biometric identifier, as that term is defined by Section 560.001,
18 Government Code, as amended by this Act, that is captured on or
19 after the effective date of this Act. A biometric identifier that
20 was captured before that date is governed by the law in effect on
21 the date the biometric identifier was captured, and that law is
22 continued in effect for that purpose.

23 SECTION 8. This Act takes effect September 1, 2019.