

By: Hughes

S.B. No. 1051

A BILL TO BE ENTITLED

AN ACT

relating to the capture and retention of certain biometric identifiers by certain governmental entities.

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 capture, retain, or use an individual's biometric identifier that is captured using a

1 photograph, video 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;

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; or

17 (5) is required for use under Section [521.059](#)  
18 Transportation Code.

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

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

26 (2) the governmental entity destroys the record of the  
27 biometric identifier on completion of the entity's use of the

1 biometric identifier for:

2 (A) the criminal investigation; or

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

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

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

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

12 (A) the individual consents to the disclosure;

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

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

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

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

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

1 biometric identifier if the biometric identifier was collected:

2 (1) under a warrant issued in the investigation of an  
3 alleged crime and charges against the individual are not filed; or

4 (2) exclusively in connection with the investigation  
5 of a crime for which:

6 (A) the individual was subsequently acquitted;  
7 or

8 (B) all charges against the individual resulting  
9 from the investigation are dismissed.

10 SECTION 5. Section 560.003, Government Code, is amended to  
11 read as follows:

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

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

17 Sec. 560.004. INJUNCTIVE RELIEF; DAMAGES. (a) Any person  
18 may institute an action for injunctive relief against a  
19 governmental entity that appears to have captured that person's  
20 biometric identifier in violation of this chapter.

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

24 (c) In addition to the injunctive relief provided by  
25 Subsection (a), the person may recover damages against a  
26 governmental entity for each violation of this chapter against that  
27 person. The person must show that a violation has occurred by a

1 preponderance of the evidence. Damages may not exceed \$1,000 for  
2 each violation.

3 (d) Each day a violation occurs or continues to occur is a  
4 separate violation.

5 (e) A person may recover reasonable expenses incurred in  
6 obtaining injunctive relief or damages under this section,  
7 including court costs, attorney's fees, investigative costs,  
8 witness fees, and deposition expenses.

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

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

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