

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 1155**

68th Legislature  
2023 Regular Session

Passed by the House April 17, 2023  
Yeas 57 Nays 40

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**Speaker of the House of  
Representatives**

Passed by the Senate April 5, 2023  
Yeas 27 Nays 21

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1155** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE HOUSE BILL 1155

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AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By House Civil Rights & Judiciary (originally sponsored by Representatives Slatter, Street, Reed, Ryu, Berg, Alvarado, Taylor, Bateman, Ramel, Senn, Goodman, Fitzgibbon, Macri, Simmons, Reeves, Lekanoff, Orwall, Duerr, Thai, Gregerson, Wylie, Ortiz-Self, Stonier, Pollet, Riccelli, Donaghy, Fosse, and Ormsby; by request of Attorney General)

READ FIRST TIME 02/07/23.

1 AN ACT Relating to the collection, sharing, and selling of  
2 consumer health data; adding a new section to chapter 44.28 RCW;  
3 adding a new chapter to Title 19 RCW; and providing an expiration  
4 date.

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

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

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

15 (2) Information related to an individual's health conditions or  
16 attempts to obtain health care services is among the most personal  
17 and sensitive categories of data collected. Washingtonians expect  
18 that their health data is protected under laws like the health  
19 information portability and accountability act (HIPAA). However,  
20 HIPAA only covers health data collected by specific health care

1 entities, including most health care providers. Health data collected  
2 by noncovered entities, including certain apps and websites, are not  
3 afforded the same protections. This act works to close the gap  
4 between consumer knowledge and industry practice by providing  
5 stronger privacy protections for all Washington consumers' health  
6 data.

7 (3) With this act, the legislature intends to provide heightened  
8 protections for Washingtonian's health data by: Requiring additional  
9 disclosures and consumer consent regarding the collection, sharing,  
10 and use of such information; empowering consumers with the right to  
11 have their health data deleted; prohibiting the selling of consumer  
12 health data without valid authorization signed by the consumer; and  
13 making it unlawful to utilize a geofence around a facility that  
14 provides health care services.

15 NEW SECTION. **Sec. 3.** The definitions in this section apply  
16 throughout this chapter unless the context clearly requires  
17 otherwise.

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

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

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

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

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

30 (3) "Authenticate" means to use reasonable means to determine  
31 that a request to exercise any of the rights afforded in this chapter  
32 is being made by, or on behalf of, the consumer who is entitled to  
33 exercise such consumer rights with respect to the consumer health  
34 data at issue.

35 (4) "Biometric data" means data that is generated from the  
36 measurement or technological processing of an individual's  
37 physiological, biological, or behavioral characteristics and that  
38 identifies a consumer, whether individually or in combination with  
39 other data. Biometric data includes, but is not limited to:

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

4 (b) Keystroke patterns or rhythms and gait patterns or rhythms  
5 that contain identifying information.

6 (5) "Collect" means to buy, rent, access, retain, receive,  
7 acquire, infer, derive, or otherwise process consumer health data in  
8 any manner.

9 (6)(a) "Consent" means a clear affirmative act that signifies a  
10 consumer's freely given, specific, informed, opt-in, voluntary, and  
11 unambiguous agreement, which may include written consent provided by  
12 electronic means.

13 (b) "Consent" may not be obtained by:

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

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

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

21 (7) "Consumer" means (a) a natural person who is a Washington  
22 resident; or (b) a natural person whose consumer health data is  
23 collected in Washington. "Consumer" means a natural person who acts  
24 only in an individual or household context, however identified,  
25 including by any unique identifier. "Consumer" does not include an  
26 individual acting in an employment context.

27 (8)(a) "Consumer health data" means personal information that is  
28 linked or reasonably linkable to a consumer and that identifies the  
29 consumer's past, present, or future physical or mental health status.

30 (b) For the purposes of this definition, physical or mental  
31 health status includes, but is not limited to:

32 (i) Individual health conditions, treatment, diseases, or  
33 diagnosis;

34 (ii) Social, psychological, behavioral, and medical  
35 interventions;

36 (iii) Health-related surgeries or procedures;

37 (iv) Use or purchase of prescribed medication;

38 (v) Bodily functions, vital signs, symptoms, or measurements of  
39 the information described in this subsection (8)(b);

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

(vii) Gender-affirming care information;  
(viii) Reproductive or sexual health information;  
(ix) Biometric data;  
(x) Genetic data;  
(xi) Precise location information that could reasonably indicate a consumer's attempt to acquire or receive health services or supplies;  
(xii) Data that identifies a consumer seeking health care services; or  
(xiii) Any information that a regulated entity or a small business, or their respective processor, processes to associate or identify a consumer with the data described in (b)(i) through (xii) of this subsection that is derived or extrapolated from nonhealth information (such as proxy, derivative, inferred, or emergent data by any means, including algorithms or machine learning).

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

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

(10) "Deidentified data" means data that cannot reasonably be used to infer information about, or otherwise be linked to, an identified or identifiable consumer, or a device linked to such consumer, if the regulated entity or the small business that possesses such data (a) takes reasonable measures to ensure that such data cannot be associated with a consumer; (b) publicly commits to process such data only in a deidentified fashion and not attempt to reidentify such data; and (c) contractually obligates any recipients of such data to satisfy the criteria set forth in this subsection (10).

(11) "Gender-affirming care information" means personal information relating to seeking or obtaining past, present, or future

gender-affirming care services. "Gender-affirming care information" includes, but is not limited to:

(a) Precise location information that could reasonably indicate a consumer's attempt to acquire or receive gender-affirming care services;

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

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

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

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

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

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

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

(14) "Geofence" means technology that uses global positioning coordinates, cell tower connectivity, cellular data, radio frequency identification, Wifi data, and/or any other form of spatial or location detection to establish a virtual boundary around a specific physical location, or to locate a consumer within a virtual boundary. For purposes of this definition, "geofence" means a virtual boundary that is 2,000 feet or less from the perimeter of the physical location.

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

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

- (b) Social, psychological, behavioral, and medical interventions;
- (c) Health-related surgeries or procedures;
- (d) Use or purchase of medication;
- (e) Bodily functions, vital signs, symptoms, or measurements of the information described in this subsection;
- (f) Diagnoses or diagnostic testing, treatment, or medication;
- (g) Reproductive health care services; or
- (h) Gender-affirming care services.

(16) "Homepage" means the introductory page of an internet website and any internet webpage where personal information is collected. In the case of an online service, such as a mobile application, homepage means the application's platform page or download page, and a link within the application, such as from the application configuration, "about," "information," or settings page.

(17) "Person" means, where applicable, natural persons, corporations, trusts, unincorporated associations, and partnerships. "Person" does not include government agencies, tribal nations, or contracted service providers when processing consumer health data on behalf of a government agency.

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

(b) "Personal information" does not include publicly available information.

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

(19) "Precise location information" means information derived from technology including, but not limited to, global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with precision and accuracy within a radius of 1,750 feet. "Precise location information" does not include the content of communications, or any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

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

(21) "Processor" means a person that processes consumer health data on behalf of a regulated entity or a small business.

1 (22) "Publicly available information" means information that (a)  
2 is lawfully made available through federal, state, or municipal  
3 government records or widely distributed media, and (b) a regulated  
4 entity or a small business has a reasonable basis to believe a  
5 consumer has lawfully made available to the general public. "Publicly  
6 available information" does not include any biometric data collected  
7 about a consumer by a business without the consumer's consent.

8 (23) "Regulated entity" means any legal entity that: (a) Conducts  
9 business in Washington, or produces or provides products or services  
10 that are targeted to consumers in Washington; and (b) alone or  
11 jointly with others, determines the purpose and means of collecting,  
12 processing, sharing, or selling of consumer health data. "Regulated  
13 entity" does not mean government agencies, tribal nations, or  
14 contracted service providers when processing consumer health data on  
15 behalf of the government agency.

16 (24) "Reproductive or sexual health information" means personal  
17 information relating to seeking or obtaining past, present, or future  
18 reproductive or sexual health services. "Reproductive or sexual  
19 health information" includes, but is not limited to:

20 (a) Precise location information that could reasonably indicate a  
21 consumer's attempt to acquire or receive reproductive or sexual  
22 health services;

23 (b) Efforts to research or obtain reproductive or sexual health  
24 services; or

25 (c) Any reproductive or sexual health information that is  
26 derived, extrapolated, or inferred, including from nonhealth  
27 information (such as proxy, derivative, inferred, emergent, or  
28 algorithmic data).

29 (25) "Reproductive or sexual health services" means health  
30 services or products that support or relate to a consumer's  
31 reproductive system or sexual well-being, including but not limited  
32 to:

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

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

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

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

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



1 (f) Diagnoses or diagnostic testing, treatment, or medication;  
2 and

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

6 (26)(a) "Sell" or "sale" means the exchange of consumer health  
7 data for monetary or other valuable consideration.

8 (b) "Sell" or "sale" does not include the exchange of consumer  
9 health data for monetary or other valuable consideration:

10 (i) To a third party as an asset that is part of a merger,  
11 acquisition, bankruptcy, or other transaction in which the third  
12 party assumes control of all or part of the regulated entity's or the  
13 small business's assets that complies with the requirements and  
14 obligations in this chapter; or

15 (ii) By a regulated entity or a small business to a processor  
16 when such exchange is consistent with the purpose for which the  
17 consumer health data was collected and disclosed to the consumer.

18 (27)(a) "Share" or "sharing" means to release, disclose,  
19 disseminate, divulge, make available, provide access to, license, or  
20 otherwise communicate orally, in writing, or by electronic or other  
21 means, consumer health data by a regulated entity or a small business  
22 to a third party or affiliate.

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

24 (i) The disclosure of consumer health data by a regulated entity  
25 or a small business to a processor when such sharing is to provide  
26 goods or services in a manner consistent with the purpose for which  
27 the consumer health data was collected and disclosed to the consumer;

28 (ii) The disclosure of consumer health data to a third party with  
29 whom the consumer has a direct relationship when: (A) The disclosure  
30 is for purposes of providing a product or service requested by the  
31 consumer; (B) the regulated entity or the small business maintains  
32 control and ownership of the data; and (C) the third party uses the  
33 consumer health data only at direction from the regulated entity or  
34 the small business and consistent with the purpose for which it was  
35 collected and consented to by the consumer; or

36 (iii) The disclosure or transfer of personal data to a third  
37 party as an asset that is part of a merger, acquisition, bankruptcy,  
38 or other transaction in which the third party assumes control of all  
39 or part of the regulated entity's or the small business's assets and  
40 complies with the requirements and obligations in this chapter.

(28) "Small business" means a regulated entity that satisfies one or both of the following thresholds:

(a) Collects, processes, sells, or shares consumer health data of fewer than 100,000 consumers during a calendar year; or

(b) Derives less than 50 percent of gross revenue from the collection, processing, selling, or sharing of consumer health data, and controls, processes, sells, or shares consumer health data of fewer than 25,000 consumers.

(29) "Third party" means an entity other than a consumer, regulated entity, processor, small business, or affiliate of the regulated entity or the small business.

NEW SECTION.     **Sec. 4.**     (1)(a) Except as provided in subsection (2) of this section, beginning March 31, 2024, a regulated entity and a small business shall maintain a consumer health data privacy policy that clearly and conspicuously discloses:

(i) The categories of consumer health data collected and the purpose for which the data is collected, including how the data will be used;

(ii) The categories of sources from which the consumer health data is collected;

(iii) The categories of consumer health data that is shared;

(iv) A list of the categories of third parties and specific affiliates with whom the regulated entity or the small business shares the consumer health data; and

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

(b) A regulated entity and a small business shall prominently publish a link to its consumer health data privacy policy on its homepage.

(c) A regulated entity or a small business may not collect, use, or share additional categories of consumer health data not disclosed in the consumer health data privacy policy without first disclosing the additional categories and obtaining the consumer's affirmative consent prior to the collection, use, or sharing of such consumer health data.

(d) A regulated entity or a small business may not collect, use, or share consumer health data for additional purposes not disclosed in the consumer health data privacy policy without first disclosing the additional purposes and obtaining the consumer's affirmative

1 consent prior to the collection, use, or sharing of such consumer  
2 health data.

3 (e) It is a violation of this chapter for a regulated entity or a  
4 small business to contract with a processor to process consumer  
5 health data in a manner that is inconsistent with the regulated  
6 entity's or the small business's consumer health data privacy policy.

7 (2) A small business must comply with this section beginning June  
8 30, 2024.

9 NEW SECTION. **Sec. 5.** (1)(a) Except as provided in subsection  
10 (2) of this section, beginning March 31, 2024, a regulated entity or  
11 a small business may not collect any consumer health data except:

12 (i) With consent from the consumer for such collection for a  
13 specified purpose; or

14 (ii) To the extent necessary to provide a product or service that  
15 the consumer to whom such consumer health data relates has requested  
16 from such regulated entity or small business.

17 (b) A regulated entity or a small business may not share any  
18 consumer health data except:

19 (i) With consent from the consumer for such sharing that is  
20 separate and distinct from the consent obtained to collect consumer  
21 health data; or

22 (ii) To the extent necessary to provide a product or service that  
23 the consumer to whom such consumer health data relates has requested  
24 from such regulated entity or small business.

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

34 (d) A regulated entity or a small business may not unlawfully  
35 discriminate against a consumer for exercising any rights included in  
36 this chapter.

37 (2) A small business must comply with this section beginning June  
38 30, 2024.

1        NEW SECTION.    **Sec. 6.**    (1)(a) Except as provided in subsection  
2        (2) of this section, beginning March 31, 2024, a consumer has the  
3        right to confirm whether a regulated entity or a small business is  
4        collecting, sharing, or selling consumer health data concerning the  
5        consumer and to access such data, including a list of all third  
6        parties and affiliates with whom the regulated entity or the small  
7        business has shared or sold the consumer health data and an active  
8        email address or other online mechanism that the consumer may use to  
9        contact these third parties.

10        (b) A consumer has the right to withdraw consent from the  
11        regulated entity's or the small business's collection and sharing of  
12        consumer health data concerning the consumer.

13        (c) A consumer has the right to have consumer health data  
14        concerning the consumer deleted and may exercise that right by  
15        informing the regulated entity or the small business of the  
16        consumer's request for deletion.

17        (i) A regulated entity or a small business that receives a  
18        consumer's request to delete any consumer health data concerning the  
19        consumer shall:

20        (A) Delete the consumer health data from its records, including  
21        from all parts of the regulated entity's or the small business's  
22        network, including archived or backup systems pursuant to (c)(iii) of  
23        this subsection; and

24        (B) Notify all affiliates, processors, contractors, and other  
25        third parties with whom the regulated entity or the small business  
26        has shared consumer health data of the deletion request.

27        (ii) All affiliates, processors, contractors, and other third  
28        parties that receive notice of a consumer's deletion request shall  
29        honor the consumer's deletion request and delete the consumer health  
30        data from its records, subject to the same requirements of this  
31        chapter.

32        (iii) If consumer health data that a consumer requests to be  
33        deleted is stored on archived or backup systems, then the request for  
34        deletion may be delayed to enable restoration of the archived or  
35        backup systems and such delay may not exceed six months from  
36        authenticating the deletion request.

37        (d) A consumer may exercise the rights set forth in this chapter  
38        by submitting a request, at any time, to a regulated entity or a  
39        small business. Such a request may be made by a secure and reliable  
40        means established by the regulated entity or the small business and

1 described in its consumer health data privacy policy. The method must  
2 take into account the ways in which consumers normally interact with  
3 the regulated entity or the small business, the need for secure and  
4 reliable communication of such requests, and the ability of the  
5 regulated entity or the small business to authenticate the identity  
6 of the consumer making the request. A regulated entity or a small  
7 business may not require a consumer to create a new account in order  
8 to exercise consumer rights pursuant to this chapter but may require  
9 a consumer to use an existing account.

10 (e) If a regulated entity or a small business is unable to  
11 authenticate the request using commercially reasonable efforts, the  
12 regulated entity or the small business is not required to comply with  
13 a request to initiate an action under this section and may request  
14 that the consumer provide additional information reasonably necessary  
15 to authenticate the consumer and the consumer's request.

16 (f) Information provided in response to a consumer request must  
17 be provided by a regulated entity and a small business free of  
18 charge, up to twice annually per consumer. If requests from a  
19 consumer are manifestly unfounded, excessive, or repetitive, the  
20 regulated entity or the small business may charge the consumer a  
21 reasonable fee to cover the administrative costs of complying with  
22 the request or decline to act on the request. The regulated entity  
23 and the small business bear the burden of demonstrating the  
24 manifestly unfounded, excessive, or repetitive nature of the request.

25 (g) A regulated entity and a small business shall comply with the  
26 consumer's requests under subsection (1)(a) through (c) of this  
27 section without undue delay, but in all cases within 45 days of  
28 receipt of the request submitted pursuant to the methods described in  
29 this section. A regulated entity and a small business must promptly  
30 take steps to authenticate a consumer request but this does not  
31 extend the regulated entity's and the small business's duty to comply  
32 with the consumer's request within 45 days of receipt of the  
33 consumer's request. The response period may be extended once by 45  
34 additional days when reasonably necessary, taking into account the  
35 complexity and number of the consumer's requests, so long as the  
36 regulated entity or the small business informs the consumer of any  
37 such extension within the initial 45-day response period, together  
38 with the reason for the extension.

39 (h) A regulated entity and a small business shall establish a  
40 process for a consumer to appeal the regulated entity's or the small

business's refusal to take action on a request within a reasonable period of time after the consumer's receipt of the decision. The appeal process must be conspicuously available and similar to the process for submitting requests to initiate action pursuant to this section. Within 45 days of receipt of an appeal, a regulated entity or a small business shall inform the consumer in writing of any action taken or not taken in response to the appeal, including a written explanation of the reasons for the decisions. If the appeal is denied, the regulated entity or the small business shall also provide the consumer with an online mechanism, if available, or other method through which the consumer may contact the attorney general to submit a complaint.

(2) A small business must comply with this section beginning June 30, 2024.

NEW SECTION. **Sec. 7.** (1) Except as provided in subsection (2) of this section, beginning March 31, 2024, a regulated entity and a small business shall:

(a) Restrict access to consumer health data by the employees, processors, and contractors of such regulated entity or small business to only those employees, processors, and contractors for which access is necessary to further the purposes for which the consumer provided consent or where necessary to provide a product or service that the consumer to whom such consumer health data relates has requested from such regulated entity or small business; and

(b) Establish, implement, and maintain administrative, technical, and physical data security practices that, at a minimum, satisfy reasonable standard of care within the regulated entity's or the small business's industry to protect the confidentiality, integrity, and accessibility of consumer health data appropriate to the volume and nature of the consumer health data at issue.

(2) A small business must comply with this section beginning June 30, 2024.

NEW SECTION. **Sec. 8.** (1)(a)(i) Except as provided in subsection (2) of this section, beginning March 31, 2024, a processor may process consumer health data only pursuant to a binding contract between the processor and the regulated entity or the small business that sets forth the processing instructions and limit the actions the

processor may take with respect to the consumer health data it processes on behalf of the regulated entity or the small business.

(ii) A processor may process consumer health data only in a manner that is consistent with the binding instructions set forth in the contract with the regulated entity or the small business.

(b) A processor shall assist the regulated entity or the small business by appropriate technical and organizational measures, insofar as this is possible, in fulfilling the regulated entity's and the small business's obligations under this chapter.

(c) If a processor fails to adhere to the regulated entity's or the small business's instructions or processes consumer health data in a manner that is outside the scope of the processor's contract with the regulated entity or the small business, the processor is considered a regulated entity or a small business with regard to such data and is subject to all the requirements of this chapter with regard to such data.

(2) A small business must comply with this section beginning June 30, 2024.

NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (6) of this section, beginning March 31, 2024, it is unlawful for any person to sell or offer to sell consumer health data concerning a consumer without first obtaining valid authorization from the consumer. The sale of consumer health data must be consistent with the valid authorization signed by the consumer. This authorization must be separate and distinct from the consent obtained to collect or share consumer health data, as required under section 5 of this act.

(2) A valid authorization to sell consumer health data is a document consistent with this section and must be written in plain language. The valid authorization to sell consumer health data must contain the following:

(a) The specific consumer health data concerning the consumer that the person intends to sell;

(b) The name and contact information of the person collecting and selling the consumer health data;

(c) The name and contact information of the person purchasing the consumer health data from the seller identified in (b) of this subsection;

1 (d) A description of the purpose for the sale, including how the  
2 consumer health data will be gathered and how it will be used by the  
3 purchaser identified in (c) of this subsection when sold;

4 (e) A statement that the provision of goods or services may not  
5 be conditioned on the consumer signing the valid authorization;

6 (f) A statement that the consumer has a right to revoke the valid  
7 authorization at any time and a description on how to submit a  
8 revocation of the valid authorization;

9 (g) A statement that the consumer health data sold pursuant to  
10 the valid authorization may be subject to redisclosure by the  
11 purchaser and may no longer be protected by this section;

12 (h) An expiration date for the valid authorization that expires  
13 one year from when the consumer signs the valid authorization; and

14 (i) The signature of the consumer and date.

15 (3) An authorization is not valid if the document has any of the  
16 following defects:

17 (a) The expiration date has passed;

18 (b) The authorization does not contain all the information  
19 required under this section;

20 (c) The authorization has been revoked by the consumer;

21 (d) The authorization has been combined with other documents to  
22 create a compound authorization; or

23 (e) The provision of goods or services is conditioned on the  
24 consumer signing the authorization.

25 (4) A copy of the signed valid authorization must be provided to  
26 the consumer.

27 (5) The seller and purchaser of consumer health data must retain  
28 a copy of all valid authorizations for sale of consumer health data  
29 for six years from the date of its signature or the date when it was  
30 last in effect, whichever is later.

31 (6) A small business must comply with this section beginning June  
32 30, 2024.

33 NEW SECTION. **Sec. 10.** It is unlawful for any person to  
34 implement a geofence around an entity that provides in-person health  
35 care services where such geofence is used to: (1) Identify or track  
36 consumers seeking health care services; (2) collect consumer health  
37 data from consumers; or (3) send notifications, messages, or  
38 advertisements to consumers related to their consumer health data or  
39 health care services.



1        NEW SECTION.    **Sec. 11.**    The legislature finds that the practices  
2 covered by this chapter are matters vitally affecting the public  
3 interest for the purpose of applying the consumer protection act,  
4 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
5 relation to the development and preservation of business, and is an  
6 unfair or deceptive act in trade or commerce and an unfair method of  
7 competition for the purpose of applying the consumer protection act,  
8 chapter 19.86 RCW.

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

10        (a) Information that meets the definition of:

11        (i) Protected health information for purposes of the federal  
12 health insurance portability and accountability act of 1996 and  
13 related regulations;

14        (ii) Health care information collected, used, or disclosed in  
15 accordance with chapter 70.02 RCW;

16        (iii) Patient identifying information collected, used, or  
17 disclosed in accordance with 42 C.F.R. Part 2, established pursuant  
18 to 42 U.S.C. Sec. 290dd-2;

19        (iv) Identifiable private information for purposes of the federal  
20 policy for the protection of human subjects, 45 C.F.R. Part 46;  
21 identifiable private information that is otherwise information  
22 collected as part of human subjects research pursuant to the good  
23 clinical practice guidelines issued by the international council for  
24 harmonization; the protection of human subjects under 21 C.F.R. Parts  
25 50 and 56; or personal data used or shared in research conducted in  
26 accordance with one or more of the requirements set forth in this  
27 subsection;

28        (v) Information and documents created specifically for, and  
29 collected and maintained by:

30        (A) A quality improvement committee for purposes of RCW  
31 43.70.510, 70.230.080, or 70.41.200;

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

33        (C) A quality assurance committee for purposes of RCW 74.42.640  
34 or 18.20.390;

35        (D) A hospital, as defined in RCW 43.70.056, for reporting of  
36 health care-associated infections for purposes of RCW 43.70.056, a  
37 notification of an incident for purposes of RCW 70.56.040(5), or  
38 reports regarding adverse events for purposes of RCW 70.56.020(2)(b);  
39 or

1 (E) A manufacturer, as defined in 21 C.F.R. Sec. 820.3(o), when  
2 collected, used, or disclosed for purposes specified in chapter 70.02  
3 RCW;

4 (vi) Information and documents created for purposes of the  
5 federal health care quality improvement act of 1986, and related  
6 regulations;

7 (vii) Patient safety work product for purposes of 42 C.F.R. Part  
8 3, established pursuant to 42 U.S.C. Sec. 299b-21 through 299b-26;

9 (viii) Information that is (A) deidentified in accordance with  
10 the requirements for deidentification set forth in 45 C.F.R. Part  
11 164, and (B) derived from any of the health care-related information  
12 listed in this subsection (1)(a)(viii);

13 (b) Information originating from, and intermingled to be  
14 indistinguishable with, information under (a) of this subsection that  
15 is maintained by:

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

19 (ii) A health care facility or health care provider as defined in  
20 RCW 70.02.010; or

21 (iii) A program or a qualified service organization as defined by  
22 42 C.F.R. Part 2, established pursuant to 42 U.S.C. Sec. 290dd-2;

23 (c) Information used only for public health activities and  
24 purposes as described in 45 C.F.R. Sec. 164.512 or that is part of a  
25 limited data set, as defined, and is used, disclosed, and maintained  
26 in the manner required, by 45 C.F.R. Sec. 164.514; or

27 (d) Identifiable data collected, used, or disclosed in accordance  
28 with chapter 43.371 RCW or RCW 69.43.165.

29 (2) Personal information that is governed by and collected, used,  
30 or disclosed pursuant to the following regulations, parts, titles, or  
31 acts, is exempt from this chapter: (a) The Gramm-Leach-Bliley act (15  
32 U.S.C. 6801 et seq.) and implementing regulations; (b) part C of  
33 Title XI of the social security act (42 U.S.C. 1320d et seq.); (c)  
34 the fair credit reporting act (15 U.S.C. 1681 et seq.); (d) the  
35 family educational rights and privacy act (20 U.S.C. 1232g; Part 99  
36 of Title 34, C.F.R.); (e) the Washington health benefit exchange and  
37 applicable statutes and regulations, including 45 C.F.R. Sec. 155.260  
38 and chapter 43.71 RCW; or (f) privacy rules adopted by the office of  
39 the insurance commissioner pursuant to chapter 48.02 or 48.43 RCW.

1 (3) The obligations imposed on regulated entities, small  
2 businesses, and processors under this chapter does not restrict a  
3 regulated entity's, small business's, or processor's ability for  
4 collection, use, or disclosure of consumer health data to prevent,  
5 detect, protect against, or respond to security incidents, identity  
6 theft, fraud, harassment, malicious or deceptive activities, or any  
7 activity that is illegal under Washington state law or federal law;  
8 preserve the integrity or security of systems; or investigate,  
9 report, or prosecute those responsible for any such action that is  
10 illegal under Washington state law or federal law.

11 (4) If a regulated entity, small business, or processor processes  
12 consumer health data pursuant to subsection (3) of this section, such  
13 entity bears the burden of demonstrating that such processing  
14 qualifies for the exemption and complies with the requirements of  
15 this section.

16 NEW SECTION. **Sec. 13.** A new section is added to chapter 44.28  
17 RCW to read as follows:

18 (1) The joint committee must review enforcement actions, as  
19 authorized in section 11 of this act, brought by the attorney general  
20 and consumers to enforce violations of this act.

21 (2) The report must include, at a minimum:

22 (a) The number of enforcement actions reported by the attorney  
23 general, a consumer, a regulated entity, or a small business that  
24 resulted in a settlement, including the average settlement amount;

25 (b) The number of complaints reported, including categories of  
26 complaints and the number of complaints for each category, reported  
27 by the attorney general, a consumer, a regulated entity, or a small  
28 business;

29 (c) The number of enforcement actions brought by the attorney  
30 general and consumers, including the categories of violations and the  
31 number of violations per category;

32 (e) The number of civil actions where a judge determined the  
33 position of the nonprevailing party was frivolous, if any;

34 (f) The types of resources, including associated costs, expended  
35 by the attorney general, a consumer, a regulated entity, or a small  
36 business for enforcement actions; and

37 (g) Recommendations for potential changes to enforcement  
38 provisions of this act.

1       (3) The office of the attorney general shall provide the joint  
2 committee any data within their purview that the joint committee  
3 considers necessary to conduct the review.

4       (4) The joint committee shall submit a report of its findings and  
5 recommendations to the governor and the appropriate committees of the  
6 legislature by September 30, 2030.

7       (5) This section expires June 30, 2031.

8       NEW SECTION.     **Sec. 14.**    If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

12       NEW SECTION.     **Sec. 15.**    Sections 1 through 12 of this act  
13 constitute a new chapter in Title 19 RCW.

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