

BILL ANALYSIS

C.S.H.B. 3491
By: Meyer
Government Transparency & Operation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the ability of a governmental body to capture or possess an individual's biometric identifier or to require an individual's biometric identifier as a prerequisite for providing a governmental service should be limited. C.S.H.B. 3491 seeks to increase privacy by establishing limitations on the use of a biometric identifier by a governmental body.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3491 amends the Government Code to redefine "biometric identifier," for purposes of statutory provisions governing the disclosure of such identifiers by a governmental body, to mean any measurement of the human body or its movement that is used to attempt to uniquely identify or authenticate the identity of a person, including a blood sample, hair sample, skin sample, DNA sample, body scan, retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

C.S.H.B. 3491 prohibits a governmental body from capturing or possessing a biometric identifier of an individual and from requiring a biometric identifier as a prerequisite for providing a governmental service to the individual unless the governmental body obtains the voluntary, written consent of the individual or the individual's legal guardian; is a health care provider or health care facility that captures, possesses, or requires the biometric identifier while providing health care services to the individual; is a criminal justice agency that captures, possesses, or requires the biometric identifier while engaged in the administration of criminal justice; or has specific, explicit statutory authority that allows the governmental body to capture or possess the individual's biometric identifier or require a biometric identifier as a prerequisite for providing a governmental service to the individual or that allows the governmental body to require and obtain the written consent of the individual or the individual's legal guardian before capturing or possessing the individual's biometric identifier or requiring a biometric identifier as a prerequisite for providing a governmental service to the individual.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3491 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

(1) "Biometric identifier" means any measurement of the human body or its movement that is used to attempt to uniquely identify or authenticate the identity of a person, including a blood sample, hair sample, skin sample, DNA sample, body scan, retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

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

Sec. 560.0015. STATUTORY AUTHORITY REQUIRED. (a) A governmental body may not capture or possess a biometric identifier of an individual or require a biometric identifier as a prerequisite for providing a governmental service to the individual unless the governmental body has:

(1) specific, explicit statutory authority that:

(A) allows the governmental body to:

(i) capture or possess the individual's biometric identifier; or

(ii) require a biometric identifier as a prerequisite for providing a governmental service to the individual; or

(B) allows the governmental body to require and obtain the written consent of the individual or the individual's legal guardian before:

(i) capturing or possessing the individual's biometric identifier; or

(ii) requiring a biometric identifier as a prerequisite for providing a governmental service to the individual; or

(2) the voluntary, written consent of the individual or the individual's legal guardian.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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

Sec. 560.0015. STATUTORY AUTHORITY REQUIRED. A governmental body may not capture or possess a biometric identifier of an individual or require a biometric identifier as a prerequisite for providing a governmental service to the individual unless the governmental body:

(1) has specific, explicit statutory authority that:

(A) allows the governmental body to:

(i) capture or possess the individual's biometric identifier; or

(ii) require a biometric identifier as a prerequisite for providing a governmental service to the individual; or

(B) allows the governmental body to require and obtain the written consent of the individual or the individual's legal guardian before:

(i) capturing or possessing the individual's biometric identifier; or

(ii) requiring a biometric identifier as a prerequisite for providing a governmental service to the individual;

(2) obtains the voluntary, written consent of the individual or the individual's legal guardian;

(3) is a health care provider or health care facility that captures, possesses, or requires

the biometric identifier while providing health care services to the individual; or (4) is a criminal justice agency, as defined by Article 60.01, Code of Criminal Procedure, that captures, possesses, or requires the biometric identifier while engaged in the administration of criminal justice, as defined by that article.

(b) For purposes of Subsection (a), Subchapter B, Chapter 33, Health and Safety Code, is specific, explicit statutory authority under Subsection (a)(1)(A)(i) to capture or possess an individual's biometric identifier in the conduct of newborn screening as provided by that subchapter.

SECTION 3. Section 560.0015, Government Code, as added by this Act, applies only to a biometric identifier captured or requested on or after the effective date of this Act. A biometric identifier captured or requested before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect September 1, 2017.

SECTION 4. Same as introduced version.