

SUBJECT: Regulating the collection and use of biometric identifiers

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 9 ayes — Brimer, Dukes, Corte, J. Davis, Elkins, George, Giddings, Solomons, Woolley

0 nays

WITNESSES: For — Michael Angelo, Compaq Computer Corp.

Against — None

DIGEST: CSHB 678 would prohibit a person or governmental body from selling, leasing, or otherwise disclosing a person's biometric identifier — defined as a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry — unless:

- ! the individual consented to the disclosure;
- ! the disclosure completed a financial transaction requested by the person;
- ! the disclosure was required or permitted under another state or federal law; or
- ! the disclosure was made by or to a law enforcement agency for a law enforcement purpose.

The bill would prohibit a person from capturing someone else's biometric identifier for a commercial purpose without that person's consent.

CSHB 678 also would require a person or governmental body possessing a person's biometric identifier to store and transmit the identifier in a manner at least as protective as that used to protect the person's other confidential information. The open-records requirements of Government Code, chapter 552 would not apply to biometric identifiers held by a governmental body.

The bill would impose a civil penalty of not more than \$25,000 for each violation of the bill's provisions and would authorize the attorney general to institute an action to recover the civil penalty.

The bill would take effect September 1, 2001.

SUPPORTERS
SAY:

CSHB 678 would provide privacy protections for people's personal biometric identifiers. Like a driver's license or personal identification number (PIN) code, a biometric identifier can be used to confirm a person's identity and limit access to sensitive or personal information. These identifiers are preferable to standard passwords or PIN codes because they cannot be forgotten and are much harder to forge. Various industries, from computer companies to automated teller machine (ATM) makers, have begun to incorporate this technology into their products. Within a few years, biometric identifiers could be the industry standard for completing transactions from ATM withdrawals to e-commerce. However, this use of biometric identifiers poses a threat to privacy, as the identifiers cannot be changed and could be used to track a person's preferences, transactions, or whereabouts.

As this new technology develops, the state must protect the privacy of this personal information. By limiting the instances in which a person or governmental body could sell, lease, or disclose a biometric identifier and by requiring that this information be stored securely, CSHB 678 would ensure that this sensitive information remains private. Furthermore, the bill would ensure that biometric identifiers could not be collected for a commercial purpose without the knowledge and consent of the individual. This is particularly important because some biometric identifiers, such as a voiceprint or record of face geometry, can be obtained easily without the individual's knowledge.

CSHB 678 would not place the same collection limitations on biometric identifiers by governmental bodies as it would place on collection by individuals, because legitimate reasons exist for authorizing the government to collect these identifiers, such as taking fingerprints for law enforcement purposes. Governmental bodies need to be able to collect biometric identifiers from people without their consent for certain law enforcement purposes, such as scanning groups of air travelers for known terrorists.

OPPONENTS
SAY:

HB 678 would not go far enough in protecting the privacy of an individual's biometric identifiers. The bill would not prohibit a company from requiring an individual to supply a biometric identifier to initiate or complete a

transaction, such as making a purchase online or withdrawing money through an ATM. Like medical information, a person's biometric identifier is highly sensitive, and a person should not have to share that information to do business that now is conducted without that information. People should have the right to withhold this information and still be guaranteed the same level of service as people who choose to share it.

Also, CSHB 678 would not protect people from the collection of their biometric identifiers by governmental bodies without their consent. Although in certain instances it may be necessary for a governmental body to collect a person's biometric identifier without that person's consent, that authority should be limited by statute and should contain provisions prohibiting a governmental body from holding this sensitive information on individuals who are not the subject of the government's search.

NOTES:

The committee substitute removed a provision in the original bill that would have prohibited a governmental body from making a voiceprint of a person without the person's consent. The substitute also changed a similar provision prohibiting the making of a voiceprint by a person to prohibit the collection of any biometric identifier by a person for a commercial purpose. The substitute added a provision that would allow a person to sell, lease, or disclose a biometric identifier if that disclosure completed a requested financial transaction.