Committee Action:
Do Pass _____
Amend & Do Pass _____
Other _____

Assembly Committee on Commerce and Labor

This measure may be considered for action during today's work session.

SENATE BILL 370 (R1)

Revises provisions relating to the protection of consumer information. (BDR 52-42)

Sponsored By: Senators Cannizzaro, Nguyen, and Doñate, et al.
Date Heard: May 17, 2023
Fiscal Notes: Effect on Local Government: No.
Effect on the State: No.

Senate Bill 370 prescribes protections for consumer health data maintained and used by certain entities that produce or provide products or services targeted to consumers in this State. The bill requires regulated entities to develop and maintain privacy policies and obtain affirmative consent from consumers before collecting or sharing health data. The bill also requires a regulated entity to establish a method for consumers to request information about their data and for data deletion, and appeal if their request is denied. The measure provides requirements governing a regulated entity's response to a consumer request, including the timeframe for responding and that an entity may respond free of charge in most circumstances. Further, the bill prohibits the sale of consumer health data without written authorization and restricts implementing geofencing around health care providers. Regulated entities are required to implement security measures and limit access to consumer health data.

In addition, the bill establishes provisions for the protection of biometric identifiers, such as facial, fingerprint, or iris data, and establishes requirements for the collection, possession, sharing, and sale of such data. Persons who possess biometric identifiers are required to develop, maintain, and comply with a written policy setting forth the retention and destruction of biometric identifiers, which must be made available to the public. The bill sets forth a legislative declaration that biometric identifiers can streamline online transactions, strengthen security, and reduce the risk of cybersecurity and fraud, but also notes the heightened risk of identity theft due to their unchangeable nature. Thus, public welfare, security, and safety would benefit from regulating the collection, use, security, management, and destruction of biometric identifiers.

The bill provides that violations of the provisions of this bill are considered deceptive trade practices. Finally, the bill provides that the provisions concerning consumer health data and biometric identifiers do not apply to data that is collected or disclosed under certain provisions of federal law, or regulation, or state law; as well as exempts such data and identifiers from existing provisions governing consumer information collected on the Internet from consumers.

Amendments:

Senator Cannizzaro proposes the following amendments (attached):

1. Delete subsection 1(k) of Section 20 of the bill, which exempts any governmental or tribal entity or any person processing consumer health data on behalf of a tribal entity from the provisions of Sections 2 through 34 of the bill concerning consumer health data. Instead exempt from those provisions, "Information processed by or for any governmental or tribal entity for civic and governmental purposes and related services and operations."

2. Amend subsection 1(c) of Section 8 of the bill to read, "Information related to the precise geolocation information of a consumer that a regulated entity uses to indicate an attempt by a consumer to receive health care services or products."

3. Amend the bill to define "precise geolocation information," to mean 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 a natural person with precision and accuracy with a radius of 1,750 feet. "Precise geolocation 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.

4. Amend Section 34.5 the bill to add, "any person who holds a nonrestricted license, as defined in *Nevada Revised Statutes* (NRS) 463.0177, or an affiliate of such a person, as defined in NRS 463.0133" to the list of persons exempt from Sections 34.1 through 34.9 of the bill concerning biometric identifiers. In conformance with that exemption, delete subsection 4(d) of Section 34.8, which allows for the sharing of biometric data performed by a person who holds a nonrestricted licensed, as defined by NRS 463.0177, under certain circumstances.

5. Amend subsection 1 of Section 20 of the bill to exempt, "law enforcement entities and law enforcement activities" from the provisions of Sections 2 through 34 of the bill concerning consumer health data.

6. Amend Section 34.5 of the bill to exempt, "law enforcement entities and law enforcement activities" from the provisions of Sections 34.1 through 34.9 of the bill concerning biometric identifiers.

7. Amend Section 34.3 of the bill to revise the definition of "biometric identifier" to mean biometric data that uniquely identifies a specific individual relating to the faceprint, fingerprint, or iris of a person that specific individual.

8. Amend subsection 3 of Section 26 to extend the amount of time a regulated entity or an affiliate, processor, contractor, or other third party may delay the deletion of data under the circumstances described in that subsection from six months to two years.

The State Privacy & Security Coalition proposes the following amendments:

9. Amend Section 34.5 of the bill to exempt from the provisions of Sections 34.1 through 34.9 of the bill concerning biometric identifiers, except for the requirement of subsection 2 of Section 34.8 that a subject be present when a biometric identifier is collected; biometric identifiers processed for the sole purpose of preventing, detecting, protecting against or responding to security incidents, identity theft, fraud, harassment, malicious or deceptive activities or any illegal activity; preserving the integrity or security of systems or investigating, reporting, or prosecuting those responsible for such action.

Misty Grimmer, Cox Communications, proposes the following amendment:

10. Amend Section 34.5 of the bill to exempt from the provisions of Sections 34.1 through 34.9 of the bill concerning biometric identifiers any communications entity or affiliate thereof identified as belonging to a Critical Infrastructure Sector as identified in Presidential Policy Directive/PPD-21, February 12, 2013.

Sen. Cannizzaro's Proposed Amendments
SB370
May 11, 2023

- In Section 20(k), after, and subject to, making the changes to Section 7 and Section 15 above, replace (k) in its entirety and replace with the following: Information processed by or for any governmental or tribal entity for civic and governmental purposes and related services and operations.

- Section 8 sub 1 sub c to read "Information related to the precise geolocation information of a consumer that a regulated entity uses to indicate an attempt by a consumer to receive health care services or products."

- Add section 10.1 "Precise geolocation 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 a natural person with precision and accuracy with a radius of 1,750 feet. "Precise geolocation 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.

- Add language "any person who holds a non-restricted license, as defined in NRS 463.0177, or an affiliate of such a person, as defined in NRS 463.0133" to the list of persons exempt from sections 34.1 to 34.9 under the new section 34.5

- Add Section 20 sub 1 sub (m) Law enforcement entities and law enforcement activities

- Add Section 34.5 sub 7. Law enforcement entities and law enforcement entities

- Sec. 34.3. New suggested language: "Biometric identifier" means biometric data <u>that uniquely identifies a specific individual</u> relating to the face<u>print</u>, fingerprint or iris of ~~a person~~ <u>that specific individual</u>.

- Amend Section 26, Sub. 3: "If data described in deletion request made pursuant to paragraph (d) of subsection 1 of section 24 of this act is stored or archived on backup systems, a regulated entity or an affiliate, processor, contractor or other third party may delay the deletion of the data for not more than *two years* after the request is authenticated, as necessary to restore the archived or backup system.

- Amend Section 34.5 to add: "Any person or business who holds a nonrestricted license, as defined by NRS 463.0177.

- Delete Section 34.8 (d)