



February 22, 2016

VIA EMAIL

Rep. Mark Harmsworth
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Rep. Jeff Morris
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436A Legislative Building
PO Box 40600
Olympia, WA 98504
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Re: Opposition to HB 1094

Dear Representatives Harmsworth and Morris,

I write on behalf of the Electronic Frontier Foundation (EFF), a non-profit legal and advocacy organization that defends free speech, privacy, and transparency in the digital world. EFF agrees that collection of biometric information and identifiers poses grave threats to privacy and security, as stated in Section 1 of your bill. We regret to inform you, however, that we oppose House Bill 1094 in its current form.

Our primary concern is that the current definition of “biometric identifier” (Sec. 3(2)) would only cover collection of biometric data “used ... to uniquely authenticate an individual’s identity *when the individual accesses a system or account.*”

It appears that the bill would not address ordinary people’s concern about surreptitious collection of biometric information in commercial venues. A shopping mall could, with impunity, face-scan or iris-scan mall visitors for marketing purposes because the mall visitors would not be “access[ing] a system or account.” We think most people would be surprised that the bill excludes such biometric collection. Moreover, the mall apparently would have no duty of reasonable care under Sec. 4(a). We are also concerned that this limited definition, combined with Sec. 4 of the bill (enforcement by attorney general under state consumer protection law), will be taken to mean that the legislature is comfortable with all other biometric collection.

We have other concerns about the bill, but wished to advise you of this major concern as soon as possible.

Sincerely,

/s/
Lee Tien
Senior Staff Attorney
EFF