



## Washington State Senate

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Hon. Nick Brown  
1125 Washington St SE Olympia WA, 98504

Dear Hon. Nick Brown,

This request seeks clarification on how the Attorney General's Office interprets RCW 19.373.080 and its seemingly blanket prohibition on geofencing capabilities even when unrelated to healthcare services as commonly understood. The ostensible wholesale prohibition appears at odds with legislative history and reaches well beyond the apparent intended purpose of the new law. An Attorney General Opinion in this case is necessary and serves the public interest because the law is newly enacted and stands to jeopardize convenient, consumer-friendly optional services and functionalities that are offered by myriad businesses that do not operate in the consumer health space or offer healthcare services as ordinarily understood.

RCW 19.373.080 states, in its entirety, that "[i]t is unlawful for any person to implement a geofence around an entity that provides in-person healthcare services where such geofence is used to: (1) identify or track consumers seeking healthcare services; (2) collect consumer health data from consumers; or (3) send notifications, messages, or advertisements to consumers related to their consumer health data or healthcare services." "Health care services" is broadly defined to mean "any service provided to a person to assess, measure, improve, or learn about a person's mental or physical health."

According to the legislative history, the genesis of the new law was to further safeguard Washingtonians' personal and sensitive health data, largely in the reproductive health space, and to prevent it from being collected and shared without a consumer's consent. However, as drafted, the statute purports to reach far beyond regulating the collection of sensitive health data, instead imposing a flat prohibition on any provider of "health care services" (broadly defined) from using a geofence, even with a consumer's consent.

This may have serious implications for many businesses, including those in the fitness and gym space, since gyms may be viewed as providing a service that "improve[s]" a person's "mental or physical health." As a result, and to provide clarity to an important

sector of the economy, we seek an opinion with respect to the following: **does the Attorney General's Office interpret RCW 19.373.080 as prohibiting a gym or fitness center from causing a consumer's mobile device, once it is within 2,000 feet of a gym or fitness center, from presenting the consumer with a barcode, QR code or other digital ID that the consumer can scan to check into the facility, even if the gym or fitness center does not use such geolocation services to identify or track the consumer or to collect consumer health data from the consumer, and even if the consumer consents to receiving such notifications?**

For context, below is an example of how a mobile application might offer a consumer the option to be prompted with a QR code that would allow the consumer to check into a gym when the consumer is nearby. This feature would be entirely optional and, importantly, it would not track or identify the consumer. It would simply enable a consumer who opts in to be presented with a QR code to facilitate the consumer's entry into a gym to exercise (thus promoting good health, an important public policy goal). The app would not identify a consumer's past, present, or future physical or mental health status, and it would be more akin to a product that "relates to 'bodily functions,'" which the Attorney General's Office has determined falls outside the ambit of the statute. <https://www.atg.wa.gov/protecting-washingtonians-personal-health-data-and-privacy> (see FAQ No. 5).

Depending on how it will be interpreted, and especially in light of the steep penalties under the law, this statute poses a risk to fitness centers and gyms in Washington and threatens to deprive Washingtonians of a voluntary, convenient, and entirely optional feature that smooths entry into places of exercise that foster health and wellness. An Attorney General Opinion will provide necessary guidance on the scope of the law and ensure that businesses and consumers alike in Washington are not deprived of a desired and helpful feature that was not intended to be prohibited under this new law. We look forward to your guidance on this matter as soon as reasonably possible. If you have any questions, please feel free to contact me at [lisa.wellman@leg.wa.gov](mailto:lisa.wellman@leg.wa.gov) or 360-786-7641 if you require any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Wellman". The signature is written in a cursive, flowing style.