

SUMMARY OF NO. 22-12

This proposed constitutional amendment would amend the Massachusetts Declaration of Rights to declare that the people have a right of privacy that may not be infringed absent a compelling governmental interest and that such interest may not be shown lightly or by needs of convenience or financial considerations. This right of privacy would extend outside the home and violations could be redressed through a private right of action that could not be replaced by arbitration.

Under this amendment, the state Legislature would be required to limit the extent to which the Commonwealth and private companies could gather data, to prohibit sharing of data, and to require the timely destruction of data absent consent of the adult data subject. The Legislature would be required to prohibit utilities from making service delivery contingent upon loss of consumer privacy and to prohibit companies from using gathered data to create profiles without the subject's consent absent a compelling state interest.

This amendment would define "data" to include location tracking, photographs, and biometric data such as voice audio, fingerprints, gait recognition, and keystroke dynamics as well as observed and inferred data. Other than fingerprinting for employment where reasonably justified, this amendment would direct the Legislature to ensure that provision of biometric

data not be required as a condition of employment or receipt of utilities or other necessary services.

The amendment would provide that it could not be construed to limit access to public records, public meetings, information relevant to public officials' conflicts of interest, residential and commercial contact information contained in the telephone book, or archived materials, nor could it be construed to restrict the liberty of the press.

The amendment provides that it would take effect immediately upon its passage and that, if any of its parts were declared invalid, the other parts would stay in effect.