

1 AN ACT relating to biometric data.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 5 of this Act, unless the context requires otherwise:*

6 *(1) "Biometric identifier" means the data of an individual generated by*
7 *measurements of an individual's unique biological characteristics such as*
8 *faceprint, fingerprint, voiceprint, retina or iris image, or any other biological*
9 *characteristic that can be used to uniquely identify the individual. It does not*
10 *include:*

11 *(a) A writing sample of a written signature;*

12 *(b) A photograph or video, except "biometric identifier" includes data*
13 *generated, captured, or collected from the biological characteristics of a*
14 *person depicted in a photograph or video;*

15 *(c) A human biological sample used for valid scientific testing or screening;*

16 *(d) Demographic data;*

17 *(e) A physical description, including height, weight, hair color, eye color, or a*
18 *tattoo description;*

19 *(f) Any donated portion of a human body stored on behalf of a recipient or a*
20 *potential recipient of a living cadaveric transplant and obtained or stored by*
21 *a federally designated organ procurement agency, including an organ,*
22 *tissue, eye, bone, artery, blood, and any other fluid or serum;*

23 *(g) Information collected, used, or stored for health care treatment, payment, or*
24 *operations under the federal Health Insurance Portability and*
25 *Accountability Act of 1996;*

26 *(h) Any image or film of the human anatomy used to diagnose, provide a*
27 *prognosis for, or treat an illness or other medical condition, or to further*

1 validate scientific testing or screening, including an X-ray, roentgen
2 process, computed tomography, magnetic resonance imaging image,
3 positron emission tomography scan, and mammography; or

4 (i) Information collected, used, or disclosed for human subject research that is
5 conducted in accordance with the federal policy for the protection of human
6 subjects, 45 C.F.R. pt. 46, or other similar research ethics laws, or with the
7 good clinical practice guidelines issued by the International Council for
8 Harmonisation of Technical Requirements for Pharmaceuticals for Human
9 Use;

10 (2) "Private entity" means any individual acting in a commercial context,
11 partnership, corporation, limited liability company, association, or other group
12 however organized. A private entity does not include a state or local government
13 agency or entity;

14 (3) "Verified request" means a request that is made by a person or by an individual
15 authorized to act as that person's representative and that the private entity can
16 verify, using commercially reasonable methods, to be the person whose biometric
17 identifier the private entity collected; and

18 (4) "Written release" means informed written consent, including written consent
19 provided by electronic means. A valid written release may not be secured through
20 a general release or user agreement. In the context of employment, a written
21 release:

22 (a) Shall only be used to secure consent to collect and use biometric identifiers
23 for the purposes of:

24 1. Permitting access to secure physical locations and to secure electronic
25 hardware and software applications without retaining data that allows
26 for employee location tracking or the tracking of how long an
27 employee spends using a hardware or software application; or

- 1 2. Recording the commencement and conclusion of an employee's full
2 work day and meal or rest breaks in excess of thirty (30) minutes; and
3 (b) May be secured in the form of a written release executed by an employee as
4 a condition of employment.

5 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) A private entity in possession of biometric identifiers shall develop a written
8 policy, made available to the public, establishing a retention schedule and
9 guidelines for permanently destroying a biometric identifier of an individual
10 according to, whichever of the following conditions occurs first:

11 (a) The date on which the initial purpose for collecting or obtaining the
12 biometric identifier has been fully satisfied;

13 (b) One (1) year after the individual's last interaction with the private entity; or

14 (c) Thirty (30) days after receiving a verified request to delete the biometric
15 identifiers submitted by the individual or the individual's representative.

16 (2) A private entity in possession of biometric identifiers shall comply with its own
17 published retention schedule and destruction guidelines, except as provided in
18 Section 5 of this Act.

19 (3) A private entity may withhold from publication a written policy that:

20 (a) Applies exclusively to employees of that private entity; and

21 (b) Is used solely within the private entity for operation of the private entity.

22 (4) A private entity shall not collect, capture, purchase, receive through trade, or
23 otherwise obtain a person's biometric identifier, unless it first:

24 (a) Informs the subject or the subject's legally authorized representative in
25 writing:

26 1. That a biometric identifier is being collected or stored; and

27 2. Of the specific purpose and length of term for which a biometric

- 1 identifier is being collected, stored, and used; and
- 2 (b) Receives a written release executed by the subject of the biometric identifier
- 3 or the subject's legally authorized representative.
- 4 (5) A private entity that collects a person's biometric identifier shall not:
- 5 (a) Sell, lease, or trade the biometric identifier; or
- 6 (b) Permit any entity to which a biometric identifier is transferred, shared, or
- 7 provided to sell, lease, or trade that biometric identifier.
- 8 (6) A private entity that collects a biometric identifier shall not disclose, redisclose, or
- 9 otherwise disseminate a person's biometric identifier unless:
- 10 (a) The subject of the biometric identifier or the subject's legally authorized
- 11 representative executes a written release consenting to the specific
- 12 disclosure or redisclosure;
- 13 (b) The disclosure or redisclosure completes a financial transaction requested
- 14 or authorized by the subject of the biometric identifier or the subject's
- 15 legally authorized representative;
- 16 (c) The disclosure or redisclosure is required by state or federal law or
- 17 municipal ordinance; or
- 18 (d) The disclosure is required pursuant to a valid warrant or subpoena issued
- 19 by a court of competent jurisdiction or a compulsory request or demand
- 20 issued by a state agency in an investigation of a violation of Sections 1 to 5
- 21 of this Act.
- 22 (7) A private entity shall not:
- 23 (a) Condition the provision of a good or service on the collection, use,
- 24 disclosure, transfer, sale, retention, or processing of biometric identifiers
- 25 unless the biometric identifiers are strictly necessary to provide the good or
- 26 service; or
- 27 (b) Charge different prices or rates for goods or services or provide a different

1 level of quality of a good or service to any individual who exercises the
2 individual's rights under this section.

3 (8) A private entity in possession of a biometric identifier shall:

4 (a) Store, transmit, and protect from disclosure all biometric identifiers using
5 the reasonable standard of care within the private entity's industry; and

6 (b) Store, transmit, and protect from disclosure all biometric identifiers in a
7 manner that is equal to or more protective than the manner in which the
8 private entity stores, transmits, and protects other confidential and sensitive
9 information.

10 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
11 READ AS FOLLOWS:

12 (1) At the request of an individual or an individual's legally authorized
13 representative, a private entity that collects biometric identifiers shall disclose to
14 the individual, free of charge, the individual's biometric identifier it collected and
15 information related to its use, including:

16 (a) The precise type of biometric identifiers that were collected or used;

17 (b) The specific sources from which the private entity collected or captured the
18 biometric identifiers;

19 (c) The specific purpose for which the private entity used the biometric
20 identifiers and personal information;

21 (d) The identities of third parties with whom the private entity shares the
22 biometric identifiers and the purposes for sharing; and

23 (e) The specific biometric identifiers that the business discloses to third parties.

24 (2) Subsection (1) of this section shall apply exclusively to:

25 (a) A sole proprietorship, partnership, limited liability company, corporation,
26 association, or other legal entity that:

27 1. Does business in Kentucky;

- 1 2. Is organized or operated for the financial benefit of its shareholders or
2 other owners;
- 3 3. Collects consumers' biometric identifiers or has such identifiers
4 collected on its behalf; and
- 5 4. Had annual gross revenues in excess of ten million dollars
6 (\$10,000,000) in the preceding calendar year;
- 7 (b) 1. Any entity that controls or is controlled by a business, as identified in
8 paragraph (a) of this subsection, and that shares common branding
9 with the business and with whom the business shares consumers'
10 personal information.
- 11 2. As used in this paragraph:
- 12 a. "Control" or "controlled" means:
- 13 i. Ownership of, or the power to vote, more than fifty percent
14 (50%) of the outstanding shares or any class of voting
15 security of a business;
- 16 ii. Control in any manner over the election of a majority of
17 the directors or of individuals exercising similar functions;
18 or
- 19 iii. Power to exercise a controlling influence over the
20 management of a company; and
- 21 b. "Common branding" means a shared name, service mark, or
22 trademark such that the average consumer would understand
23 that two (2) or more entities are commonly owned; and
- 24 (c) A joint venture or partnership composed of businesses in which each
25 business has at least a forty percent (40%) interest. For purposes of Sections
26 1 to 5 of this Act, the joint venture or partnership and each business that
27 composes the joint venture or partnership shall separately be considered a

1 single business, except that personal information in the possession of each
2 business and disclosed to the joint venture or partnership shall not be
3 shared with the other business.

4 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) An individual who sustains damages by any violation of Sections 1 to 5 of this Act
7 shall have a civil cause of action in Circuit Court to enjoin further violations and
8 to recover actual damages, including punitive damages, together with the costs of
9 the action and reasonable attorney's fees.

10 (2) The Attorney General may bring an action against a private entity who violates
11 any provisions of Sections 1 to 5 of this Act, and shall be entitled to seek any
12 forms of relief and remedies available to private plaintiffs, including the
13 collection of damages as a civil penalty.

14 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
15 READ AS FOLLOWS:

16 Nothing in Sections 1 to 5 of this Act shall be construed to:

17 (1) Impact the admission or discovery of biometric identifiers of any kind in any
18 court, or before any tribunal, board, or agency;

19 (2) Conflict with the Health Insurance Portability and Accountability Act of 1996
20 and the administrative regulations promulgated thereunder;

21 (3) Apply to information collected, processed, sold, or disclosed pursuant to the
22 Gramm-Leach-Bliley Act of 1999 and the administrative regulations promulgated
23 thereunder; or

24 (4) Apply to a contractor, subcontractor, or agent of a Kentucky public agency or
25 unit of local government working for a public agency, except when the biometric
26 identifier collection, retention, and use is in direct service of the purpose for
27 which the Kentucky public agency or local unit of government retained the

1 *services of the contractor, subcontractor, or agent.*

2 ➔Section 6. This Act may be cited as the Biometric Identifiers Privacy Act.