

1 AN ACT relating to biometric data collection practices.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 369 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section, unless the context requires otherwise:*

6 *(a) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint,*
7 *or scan of hand or face geometry. Biometric identifier does not include*
8 *writing samples used for valid scientific testing or screening, demographic*
9 *data, tattoo descriptions, or physical descriptions such as height, weight,*
10 *hair color, or eye color. Biometric identifier does not include anatomical*
11 *gifts, organs, tissues, or parts as defined by KRS 311.1911. Biometric*
12 *identifier does not include information captured from a patient in a health*
13 *care setting or information collected, used, or stored for health care*
14 *treatment, payment, or operations under the federal Health Insurance*
15 *Portability and Accountability Act of 1996. Biometric identifiers do not*
16 *include an X-ray, roentgen process, computed tomography, MRI, PET scan,*
17 *mammography, or other image or film of the human anatomy used to*
18 *diagnose, prognose, or treat an illness or other medical condition or to*
19 *further validate scientific testing or screening;*

20 *(b) "Biometric information" means any information, regardless of how it is*
21 *captured, converted, stored, or shared, based on an individual's biometric*
22 *identifier used to identify an individual. Biometric information does not*
23 *include information derived from items or procedures excluded under the*
24 *definition of biometric identifiers;*

25 *(c) "Confidential and sensitive information" means personal information that*
26 *can be used to uniquely identify an individual or an individual's account or*
27 *property. Examples of confidential and sensitive information include but*

1 are not limited to a genetic marker, genetic testing information, a unique
2 identifier number to locate an account or property, an account number, a
3 PIN number, a passcode, a driver's license number, or a Social Security
4 number;

5 (d) "Private entity" means any individual, partnership, corporation, limited
6 liability company, association, or other group, however organized. A private
7 entity does not include a state or local government agency nor any court of
8 Kentucky, a clerk of the court, or a judge or justice thereof; and

9 (e) "Written release" means written consent based on conveyance of pertinent
10 information, or, in the context of employment, a release executed by an
11 employee as a condition of employment.

12 (2) A private entity in possession of any biometric identifier or biometric information
13 shall develop a written policy, made available to the public, establishing a
14 retention schedule and guidelines for permanently destroying biometric
15 identifiers and biometric information when the initial purpose for collecting or
16 obtaining such identifiers or information has been satisfied or within three (3)
17 years of the individual's last interaction with the private entity, whichever occurs
18 first. Absent a valid warrant or subpoena issued by a court of competent
19 jurisdiction, a private entity in possession of any biometric identifier or biometric
20 information shall comply with its established retention schedule and destruction
21 guidelines.

22 (3) No private entity may collect, capture, purchase, receive through trade, or
23 otherwise obtain a person's or a customer's biometric identifier or biometric
24 information, unless it first:

25 (a) Informs the subject or subject's legally authorized representative in writing
26 that a biometric identifier or biometric information is being collected or
27 stored;

- 1 (b) Informs the subject or the subject's legally authorized representative in
2 writing of the specific purpose and length of time for which any biometric
3 identifier or biometric information is being collected, stored, and used; and
- 4 (c) Receives a written release executed by the subject of the biometric identifier
5 or biometric information or the subject's legally authorized representative.
- 6 (4) No private entity in possession of a biometric identifier or biometric information
7 may sell, lease, trade, or otherwise profit from a person's or a customer's
8 biometric identifier or biometric information.
- 9 (5) No private entity in possession of a biometric identifier or biometric information
10 may disclose or otherwise disseminate a person's or a customer's biometric
11 identifier or biometric information unless:
- 12 (a) The subject of the biometric identifier or biometric information or the
13 subject's legally authorized representative consents to the disclosure;
- 14 (b) The disclosure completes a financial transaction requested or authorized by
15 the subject of the biometric identifier or the biometric information or the
16 subject's legally authorized representative;
- 17 (c) The disclosure is required by state or federal law or municipal ordinance;
18 or
- 19 (d) The disclosure is required pursuant to a valid warrant or subpoena issued
20 by a court of competent jurisdiction.
- 21 (6) A private entity in possession of a biometric identifier or biometric information
22 shall store, transmit, and protect from disclosure all biometric identifiers and
23 biometric information using the reasonable standard of care within the private
24 entity's industry and in a manner that is the same as or more protective than the
25 manner in which the private entity stores, transmits, and protects other
26 confidential and sensitive information.
- 27 (7) Any person aggrieved by a violation of this section has a right of action in the

1 Commonwealth or as a supplemental claim in federal District Court against an
2 offending party. A prevailing party may recover for each violation:

3 (a) Against a private entity that negligently violates a provision of this Section,
4 liquidated damages of one thousand dollars (\$1,000) or actual damages,
5 whichever is greater;

6 (b) Against a private entity that intentionally or recklessly violates a provision
7 of this Section, liquidated damages of five thousand dollars (\$5,000) or
8 actual damages, whichever is greater;

9 (c) Reasonable attorneys' fees costs, including expert witness fees and other
10 litigation expenses; and

11 (d) Other relief, including an injunction, as the state or federal court may deem
12 appropriate.

13 (8) Notwithstanding subsections (1) to (7) of this section, nothing in this section shall
14 be construed to:

15 (a) Impact the admission or discovery of biometric identifiers and biometric
16 information in any action of any kind in any court, or before any tribunal,
17 board, agency, or person;

18 (b) Conflict with federal and state laws concerning x-ray retention, or the
19 federal Health Insurance Portability and Accountability Act of 1996 and the
20 rules promulgated thereunder;

21 (c) Impact licensing and reporting requirements as codified in KRS 311.6208,
22 314.475, 327.300, and 393A.770;

23 (d) Apply in any manner to a financial institution or an affiliate of a financial
24 institution or an affiliate of a financial institution that is subject to Title V
25 of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated
26 thereunder; or

27 (e) Apply to a contractor, subcontractor, or agent of a state agency or local unit

1 *of government when working for that state agency or local unit of*
2 *government.*