



# 130th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2022

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Legislative Document

No. 1945

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H.P. 1450

House of Representatives, January 26, 2022

### **An Act To Regulate the Use of Biometric Identifiers**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive script.

ROBERT B. HUNT  
Clerk

Presented by Representative O'NEIL of Saco.  
Cosponsored by Senator BAILEY of York and  
Representatives: ANDREWS of Paris, FAULKINGHAM of Winter Harbor, Senators:  
HICKMAN of Kennebec, MAXMIN of Lincoln.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 1057** is enacted to read:

3 **CHAPTER 1057**

4 **PRIVACY OF PERSONAL INFORMATION**

5 **§9601. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms  
7 have the following meanings.

8 **1. Affirmative written consent.** "Affirmative written consent" means:

9 A. A specific, unambiguous and informed written consent given by an individual who  
10 is not under duress or undue influence at the time the consent is given; or

11 B. In the context of employment, a release signed by an employee as a condition of  
12 employment.

13 **2. Biometric identifier.** "Biometric identifier" means information generated by  
14 measurements of an individual's unique biological characteristics, including imagery of the  
15 iris, retina, fingerprint, face or hand, that can be used to identify that individual. "Biometric  
16 identifier" does not include:

17 A. A writing sample or written signature;

18 B. A photograph or video, except for measurable biological characteristics that can be  
19 generated or captured from a photograph or video;

20 C. A biological sample used for valid scientific testing or screening;

21 D. Demographic information;

22 E. A tattoo description or a physical description, such as height, weight, hair color or  
23 eye color;

24 F. A donated organ, tissue or other body part, blood or serum stored on behalf of a  
25 recipient or potential recipient of a living or cadaveric transplant and obtained or stored  
26 by a federally designated organ procurement organization;

27 G. Information captured from a patient in a health care setting or information collected,  
28 used or stored for health care treatment, payment or operations under the federal Health  
29 Insurance Portability and Accountability Act of 1996, Public Law 104-191; or

30 H. An x-ray, computed tomography, magnetic resonance imaging, positron emission  
31 tomography, mammography or other image or film of the human anatomy used to  
32 diagnose or treat an illness or other medical condition or to further validate scientific  
33 testing or screening.

34 **3. Personal information.** "Personal information" means information that identifies,  
35 relates to, describes, is reasonably capable of being associated with or could reasonably be  
36 linked, directly or indirectly, with a particular individual, household or electronic device.

1           **4. Private entity.** "Private entity" means an individual, partnership, corporation,  
2 limited liability company, association or other group, however organized, that conducts  
3 business. "Private entity" does not include a state or local government agency, court, judge,  
4 justice or clerk of the court.

5           **5. Processor.** "Processor" means a private entity that collects, processes, stores or  
6 otherwise uses biometric identifiers on behalf of another private entity.

7           **§9602. Applicability**

8           **1. Processors.** A processor is not required to comply with the requirements of this  
9 chapter with respect to the biometric identifiers that the processor stores, processes or  
10 otherwise uses under an agreement with another private entity with which the processor is  
11 not affiliated through common ownership. A processor is required to comply with the  
12 requirements of this chapter with respect to the biometric identifiers that the processor  
13 collects, stores, processes or uses that are not covered by an agreement with another private  
14 entity with which the processor is not affiliated through common ownership.

15           **2. General exceptions.** This chapter does not apply to:

16           A. The admission or discovery of a biometric identifier in any action of any kind in  
17 any court or before any government tribunal, board or agency;

18           B. A requirement under the federal Health Insurance Portability and Accountability  
19 Act of 1996, Public Law 104-191 and applicable regulations; or

20           C. A contractor, subcontractor or agent of a state agency or local unit of government  
21 when working for that state agency or local unit of government.

22           **§9603. Biometric identifier policy requirements**

23           **1. Development of policy.** Except as provided by subsection 3, a private entity in  
24 possession of biometric identifiers shall develop and make available to the public a written  
25 policy that establishes a retention schedule and guidelines for permanently destroying a  
26 biometric identifier of an individual on the earlier of:

27           A. The date on which the initial purpose for obtaining the biometric identifier has been  
28 satisfied; or

29           B. One year after the individual's last intentional interaction with the private entity in  
30 possession of the biometric identifier.

31           **2. Adherence to policy.** A private entity shall comply with the policy developed by  
32 the private entity under subsection 1, except for an action taken in response to a valid  
33 warrant or subpoena issued by a court of competent jurisdiction.

34           **3. Exception.** A private entity is not required to make available to the public a written  
35 policy that:

36           A. Applies only to the employees of the private entity; and

37           B. Is used solely within the private entity for the operation of the private entity.

38           **4. Violation.** A violation of this section is a violation of the Maine Unfair Trade  
39 Practices Act.

40           **§9604. Storage, transmission and protection**

1 1. Standards. A private entity that collects or possesses a biometric identifier shall  
2 store, transmit and protect from disclosure that biometric identifier in a manner that is:

3 A. Consistent with the reasonable standard of care used in the private entity's industry;  
4 and

5 B. As protective or more protective than the manner in which the private entity stores,  
6 transmits and protects from disclosure other confidential and sensitive information.

7 2. Confidential and sensitive information. For purposes of this section, "confidential  
8 and sensitive information" means personal information that can be used to identify an  
9 individual or an individual's account or property, including:

10 A. Genetic testing information;

11 B. A unique or personal identification number;

12 C. An account number;

13 D. A pass code;

14 E. A driver's license number; and

15 F. A social security number.

16 **§9605. Required disclosure**

17 1. Disclosure required. On the request of an individual, a private entity that collects  
18 or possesses a biometric identifier shall disclose to that individual, free of charge, any  
19 biometric identifier associated with that individual and the information required by  
20 subsection 2.

21 2. Required information. The information disclosed as required by subsection 1 must  
22 include all the relevant information for the period of 12 months before the biometric  
23 identifier was collected by or entered into the possession of the private entity, including:

24 A. The type of biometric identifier;

25 B. All personal information related to the biometric identifier;

26 C. The types of sources from which the private entity obtained the biometric identifier  
27 and personal information linked to the biometric identifier;

28 D. The use of the biometric identifier and personal information linked to the biometric  
29 identifier;

30 E. The type of 3rd party with which the private entity has shared the biometric  
31 identifier; and

32 F. The type of personal information linked to the biometric identifier that the private  
33 entity has disclosed to a 3rd party.

34 3. Violation. A violation of this section is a violation of the Maine Unfair Trade  
35 Practices Act.

36 **§9606. Prohibitions**

37 1. Collection or dissemination without consent. A private entity may not collect,  
38 purchase, receive through trade or otherwise obtain, use, disclose, transfer or otherwise  
39 disseminate an individual's biometric identifier unless the private entity first:

1           A. Informs the individual in writing that a biometric identifier is being collected,  
2           purchased, received through trade or otherwise obtained, used, disclosed, transferred  
3           or otherwise disseminated;

4           B. Informs the individual in writing of the specific purpose and length of time for  
5           which a biometric identifier is being collected, purchased, received through trade or  
6           otherwise obtained, used, disclosed, transferred or otherwise disseminated; and

7           C. Receives affirmative written consent from the individual.

8           This subsection does not apply to a disclosure of a biometric identifier if the disclosure  
9           completes a financial transaction requested or authorized by the individual, is required by  
10           state or federal law or municipal ordinance or is required pursuant to a valid warrant or  
11           subpoena issued by a court of competent jurisdiction.

12           **2. Sale, lease or trade without consent.** A private entity that is not acting as a  
13           processor and that collects a biometric identifier may not sell, lease, trade or otherwise  
14           profit from that biometric identifier unless the individual to whom the biometric identifier  
15           pertains has provided affirmative written consent for the sale, lease, trade or other activity.

16           **3. Discrimination.** A private entity may not:

17           A. Condition a sale of goods or the provision of a service on the collection, use,  
18           disclosure, transfer, sale or processing of a biometric identifier unless the use of a  
19           biometric identifier is strictly necessary to the sale of the goods or the provision of the  
20           service;

21           B. Charge a different price or rate for goods or the provision of a service to a customer  
22           that does not provide affirmative written consent to providing a biometric identifier; or

23           C. Provide a different quality of goods or a service to a customer that does not provide  
24           affirmative written consent to providing a biometric identifier.

25           **4. Processors.** A processor may not perform an action related to a biometric identifier  
26           unless:

27           A. The processor has received affirmative written consent from the individual to whom  
28           the biometric identifier pertains to perform the action; and

29           B. The action falls within the terms and conditions of an agreement between the  
30           processor and the private entity that owns or controls the biometric identifier.

31           **5. Violation.** A violation of this section is a violation of the Maine Unfair Trade  
32           Practices Act.

33           **§9607. Private right of action**

34           **1. Action for violation.** An individual aggrieved by a violation of this chapter may  
35           bring an action against an offending private entity. If the individual prevails in the action,  
36           the individual is entitled to:

37           A. For a violation of this chapter:

38                   (1) As a result of negligence, actual damages or \$1,000 per violation, whichever  
39                   is greater; or

40                   (2) As a result of recklessness or intentional misconduct, actual damages or \$5,000  
41                   per violation, whichever is greater;

- 1           B. Reasonable attorney's fees and court costs, including expert witness fees and other
- 2           litigation expenses; and
- 3           C. Other relief, including injunctive or equitable relief, as the court determines
- 4           appropriate.

**SUMMARY**

6           This bill provides for an individual's privacy regarding the collection and use of  
7           biometric identifiers of the individual and personal information connected to the biometric  
8           identifiers. The bill requires a written release from an individual before a private entity  
9           may obtain or use biometric identifiers and requires the private entity to establish a policy  
10          for retention and destruction of the identifiers. The bill provides for a private right of action  
11          for an aggrieved individual who has had biometric identifiers obtained or used in violation  
12          of the new provisions. The bill also provides that violations of provisions related to  
13          biometric identifiers constitute violations of the Maine Unfair Trade Practices Act.