

SECOND REGULAR SESSION

HOUSE BILL NO. 2716

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CLEMENS.

4877H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 1, RSMo, by adding thereto five new sections relating to the biometric information privacy act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 1, RSMo, is amended by adding thereto five new sections, to be
2 known as sections 1.561, 1.563, 1.566, 1.569, and 1.572, to read as follows:

2 **1.561. Sections 1.561 to 1.572 shall be known and may be cited as the "Biometric**
2 **Information Privacy Act".**

1.563. As used in sections 1.561 to 1.572, the following terms mean:

2 **(1) "Biometric identifier", a retina or iris scan, fingerprint, voiceprint, or scan of**
3 **hand or face geometry. "Biometric identifier" does not include:**

4 **(a) Writing samples, written signatures, photographs, human biological samples**
5 **used for valid scientific testing or screening, demographic data, tattoo descriptions, or**
6 **physical descriptions such as height, weight, hair color, or eye color;**

7 **(b) Any donated organ, tissue, or part as those terms are defined under section**
8 **194.210 or blood or serum stored on behalf of recipients or potential recipients of living**
9 **or cadaveric transplants and obtained or stored by a federally designated organ**
10 **procurement agency;**

11 **(c) Information captured from a patient in a health care setting or information**
12 **collected, used, or stored for health care treatment, payment, or operations under the**
13 **federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191;**
14 **or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (d) An X-ray, roentgen process, computed tomography, MRI, PET scan,
16 mammography, or other image or film of the human anatomy used to diagnose,
17 prognose, or treat an illness or other medical condition or to further validate scientific
18 testing or screening;

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

23 (3) "Confidential and sensitive information", personal information that can be
24 used to uniquely identify an individual or an individual's account or property.
25 Examples of confidential and sensitive information include, but are not limited to, a
26 genetic marker, genetic testing information, a unique identifier number to locate an
27 account or property, an account number, a PIN number, a pass code, a driver's license
28 number, or a Social Security number;

29 (4) "Private entity", any individual, partnership, corporation, limited liability
30 company, association, or other group, however organized. "Private entity" does not
31 include a state or local government agency. "Private entity" does not include any court
32 of Missouri, a clerk of the court, or a judge or justice thereof;

33 (5) "Written release", informed written consent or, in the context of
34 employment, a release executed by an employee as a condition of employment.

1.566. 1. Any private entity in possession of biometric identifiers or biometric
2 information shall develop a written policy, made available to the public, establishing a
3 retention schedule and guidelines for permanently destroying biometric identifiers and
4 biometric information when the initial purpose for collecting or obtaining such
5 identifiers or information has been satisfied or within three years of the individual's last
6 interaction with the private entity, whichever occurs first. Absent a valid warrant or
7 subpoena issued by a court of competent jurisdiction, a private entity in possession of
8 biometric identifiers or biometric information shall comply with its established
9 retention schedule and destruction guidelines.

10 2. No private entity shall collect, capture, purchase, receive through trade, or
11 otherwise obtain a person's or a customer's biometric identifier or biometric
12 information unless it first:

13 (1) Informs the person or customer, or the person's or customer's legally
14 authorized representative, in writing that a biometric identifier or biometric
15 information is being collected or stored;

16 **(2) Informs the person or customer, or the person's or customer's legally**
17 **authorized representative, of the specific purpose and length of term for which a**
18 **biometric identifier or biometric information is being collected, stored, and used; and**

19 **(3) Receives a written release executed by the person or customer or the person's**
20 **or customer's legally authorized representative.**

21 **3. (1) Any entity or individual required to comply with the federal Health**
22 **Insurance Portability and Accountability Act, Pub. L. No. 104-191, shall treat biometric**
23 **identifiers and biometric information as individually identifiable health information and**
24 **unique health identifiers protected under that act or the rules promulgated thereunder.**

25 **(2) No private entity in possession of a biometric identifier or biometric**
26 **information shall sell, lease, trade, or otherwise profit from a person's or a customer's**
27 **biometric identifier or biometric information.**

28 **4. No private entity in possession of a biometric identifier or biometric**
29 **information shall disclose, redisclose, or otherwise disseminate a person's or a**
30 **customer's biometric identifier or biometric information unless:**

31 **(1) The person or customer, or the person's or customer's legally authorized**
32 **representative, consents to the disclosure or redisclosure;**

33 **(2) The disclosure or redisclosure completes a financial transaction requested or**
34 **authorized by the person or customer, or the person's or customer's legally authorized**
35 **representative;**

36 **(3) The disclosure or redisclosure is required by state law, federal law, or**
37 **municipal ordinance; or**

38 **(4) The disclosure is required pursuant to a valid warrant or subpoena issued by**
39 **a court of competent jurisdiction.**

40 **5. A private entity in possession of a biometric identifier or biometric**
41 **information shall:**

42 **(1) Store, transmit, and protect from disclosure all biometric identifiers and**
43 **biometric information using the reasonable standard of care within the private entity's**
44 **industry; and**

45 **(2) Store, transmit, and protect from disclosure all biometric identifiers and**
46 **biometric information in a manner that is the same as or more protective than the**
47 **manner in which the private entity stores, transmits, and protects other confidential and**
48 **sensitive information.**

1.569. Any person aggrieved by a violation of sections 1.561 to 1.572 shall have a
2 **right of action in a state circuit court or as a supplemental claim in federal district court**
3 **against an offending party including, but not limited to, a class action brought pursuant**
4 **to the rules of the Missouri supreme court. The court shall award all attorney's fees and**

5 costs, including expert witness fees and other litigation expenses, to the prevailing party.

6 A prevailing party may recover for each violation:

7 (1) Against a private entity that negligently violates a provision of sections 1.561
8 to 1.572, liquidated damages of one thousand dollars or actual damages, whichever is
9 greater;

10 (2) Against a private entity that intentionally or recklessly violates a provision of
11 sections 1.561 to 1.572, liquidated damages of five thousand dollars or actual damages,
12 whichever is greater; and

13 (3) Other relief, including an injunction, as the state or federal court may deem
14 appropriate.

1.572. 1. Nothing in sections 1.561 to 1.572 shall be construed to impact the
2 admission or discovery of biometric identifiers and biometric information in any action
3 of any kind in any court, or before any tribunal, board, agency, or person.

4 2. Nothing in sections 1.561 to 1.572 shall be construed to conflict with section
5 334.097 or with the federal Health Insurance Portability and Accountability Act of 1996,
6 Pub. L. 104-191, or the rules promulgated thereunder.

7 3. Nothing in sections 1.561 to 1.572 shall be deemed to apply in any manner to a
8 financial institution or an affiliate of a financial institution that is subject to Title V of
9 the federal Gramm-Leach-Bliley Act of 1999, Pub. L. 106-102, and the rules
10 promulgated thereunder.

11 4. Nothing in sections 1.561 to 1.572 shall be construed to apply to a contractor,
12 subcontractor, or agent of a state agency or local unit of government when working for
13 that state agency or local unit of government.

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