

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) 1. "Biometric identifier" means a retina or iris scan, fingerprint,*
7 *voiceprint, or scan of hand or face geometry.*

8 *2. "Biometric identifier" does not include:*

9 *a. Writing samples used for valid scientific testing or screening,*
10 *demographic data, tattoo descriptions, or physical descriptions*
11 *such as height, weight, hair color, or eye color;*

12 *b. Anatomical gifts, organs, tissues, or parts as defined by KRS*
13 *311.1911;*

14 *c. Information captured from a patient in a health care setting or*
15 *information collected, used, or stored for health care treatment,*
16 *payment, or operations under the federal Health Insurance*
17 *Portability and Accountability Act of 1996; or*

18 *d. An X-ray, roentgen process, computed tomography, MRI, PET*
19 *scan, mammography, or other image or film of the human*
20 *anatomy used to diagnose, prognose, or treat an illness or other*
21 *medical condition or to further validate scientific testing or*
22 *screening;*

23 *(b) 1. "Biometric information" means any information, regardless of how it*
24 *is captured, converted, stored, or shared, based on an individual's*
25 *biometric identifier used to identify an individual*

26 *2. "Biometric information" does not include information derived from*
27 *items or procedures excluded under the definition of biometric*

1 identifier;

2 (c) 1. "Confidential and sensitive information" means personal information
3 that can be used to uniquely identify an individual or an individual's
4 account or property.

5 2. "Confidential and sensitive information" includes but is not limited to
6 a genetic marker, genetic testing information, a unique identifier
7 number to locate an account or property, an account number, a PIN
8 number, a passcode, a motor vehicle or motorcycle operator's license
9 number, or a Social Security number;

10 (d) 1. "Private entity" means any individual, partnership, corporation,
11 limited liability company, association, or other group, however
12 organized.

13 2. "Private entity" does not include a state or local government agency
14 or any court of Kentucky, a clerk of the court, or a judge or justice
15 thereof; and

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

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

1 guidelines.

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

5 (a) Obtains consent from the subject or the subject's legally authorized
6 representative in writing that a biometric identifier or biometric information
7 may be collected or stored; and

8 (b) Informs the subject or the subject's legally authorized representative in
9 writing of the specific purpose and length of time for which any biometric
10 identifier or biometric information is being collected, stored, and used.

11 (4) A private entity in possession of a biometric identifier or biometric information
12 shall not sell, lease, trade, or otherwise profit from a person's or a customer's
13 biometric identifier or biometric information.

14 (5) A private entity in possession of a biometric identifier or biometric information
15 shall not disclose or otherwise disseminate a person's or a customer's biometric
16 identifier or biometric information unless:

17 (a) The subject of the biometric identifier or biometric information or the
18 subject's legally authorized representative consents to the disclosure;

19 (b) The disclosure completes a financial transaction requested or authorized by
20 the subject of the biometric identifier or the biometric information or the
21 subject's legally authorized representative;

22 (c) The disclosure is required by state or federal law or municipal ordinance;
23 or

24 (d) The disclosure is required pursuant to a valid warrant or subpoena issued
25 by a court of competent jurisdiction.

26 (6) A private entity in possession of a biometric identifier or biometric information
27 shall store, transmit, and protect from disclosure all biometric identifiers and

1 biometric information using the reasonable standard of care within the private
2 entity's industry and in a manner that is the same as or more protective than the
3 manner in which the private entity stores, transmits, and protects other
4 confidential and sensitive information.

5 (7) Any person aggrieved by a violation of this section has a right of action in the
6 Commonwealth or as a supplemental claim in federal District Court against an
7 offending party. A prevailing party may recover for each violation:

8 (a) Against a private entity that negligently violates a provision of this section,
9 liquidated damages of one thousand dollars (\$1,000) or actual damages,
10 whichever is greater;

11 (b) Against a private entity that intentionally or recklessly violates a provision
12 of this section, liquidated damages of five thousand dollars (\$5,000) or
13 actual damages, whichever is greater;

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

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

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

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

23 (b) Conflict with federal and state laws concerning X-ray retention, or the
24 federal Health Insurance Portability and Accountability Act of 1996 and the
25 rules promulgated thereunder;

26 (c) Impact licensing and reporting requirements as codified in KRS 311.6208,
27 314.475, 327.300, and 393A.820;

- 1 (d) Apply in any manner to a financial institution or an affiliate of a financial
2 institution that is subject to Title V of the federal Gramm-Leach-Bliley Act
3 of 1999 and the rules promulgated thereunder; or
4 (e) Apply to a contractor, subcontractor, or agent of a state agency or local unit
5 of government when working for that state agency or local unit of
6 government.