AN ACT relating to biometric data collection practices.

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

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

(I) As used in this section, unless the context requires otherwise:

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

2. "Biometric identifier" does not include:

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

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

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

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

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

2. "Biometric information" does not include information derived from items or procedures excluded under the definition of biometric
(c) 1. "Confidential and sensitive information" means personal information that can be used to uniquely identify an individual or an individual's account or property.

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

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

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

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

(2) A private entity in possession of any biometric identifier or biometric information shall develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three (3) years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of any biometric identifier or biometric information shall comply with its established retention schedule and destruction
(3) A private entity shall not collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

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

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

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

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

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

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

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

or

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

(6) A private entity in possession of a biometric identifier or biometric information shall store, transmit, and protect from disclosure all biometric identifiers and
biometric information using the reasonable standard of care within the private
texty's industry and in a manner that is the same as or more protective than the
manner in which the private entity stores, transmits, and protects other
confidential and sensitive information.

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

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

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

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

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

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

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

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

(c) Impact licensing and reporting requirements as codified in KRS 311.6208,
314.475, 327.300, and 393A.820;
(d) Apply in any manner to a financial institution or an affiliate of a financial
institution that is subject to Title V of the federal Gramm-Leach-Bliley Act
of 1999 and the rules promulgated thereunder; or
(e) Apply to a contractor, subcontractor, or agent of a state agency or local unit
of government when working for that state agency or local unit of
government.