

JAN 20 2023

A BILL FOR AN ACT

RELATING TO BIOMETRIC INFORMATION PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the use of biometric
2 identifiers and biometric information is growing in the business
3 and security screening sectors. Biometric data can be used to
4 facilitate financial transactions, airport screenings, criminal
5 investigations, building access, and for other tasks where
6 identity verification is important.

7 However, the legislature recognizes that the full
8 ramifications of biometric information are not fully known and
9 that biometric information is at heightened risk for identity
10 theft. Biometric data is unique to the individual and cannot be
11 changed, so if a person's information is compromised, the person
12 may have little recourse.

13 The legislature believes that it is in the best interest of
14 public safety to ensure that biometric identifiers and biometric
15 information are properly safeguarded.

16 Accordingly, the purpose of this Act is to establish
17 standards for the collection, storage, retention, and



1 destruction of biometric identifiers and biometric information
2 by private entities.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 BIOMETRIC INFORMATION PRIVACY

8 § -1 Short title. This chapter shall be known and may
9 be cited as the Hawaii Biometric Information Privacy Act.

10 § -2 Definitions. As used in this chapter, unless the
11 context otherwise requires:

12 "Biometric identifier" means a retina or iris scan,
13 fingerprint, voiceprint, or scan of the hand or face geometry.

14 Biometric identifiers do not include:

- 15 (1) Writing samples;
- 16 (2) Written signatures;
- 17 (3) Photographs;
- 18 (4) Human biological samples used for valid scientific
19 testing or screening;
- 20 (5) Demographic data;
- 21 (6) Tattoo descriptions;



- 1 (7) Physical descriptions, including height, weight, hair
2 color, or eye color;
- 3 (8) Donated organs, tissues, or other anatomical body
4 parts stored on behalf of recipients or potential
5 recipients of living or cadaveric transplants and
6 obtained or stored by a federally designated organ
7 procurement agency;
- 8 (9) Blood or serum;
- 9 (10) Biological materials regulated under the federal
10 Genetic Information Privacy Act;
- 11 (11) Information captured from a patient in a health care
12 setting or information collected, used, or stored for
13 health care treatment, payment, or operations under
14 the federal Health Insurance Portability and
15 Accountability Act of 1996; and
- 16 (12) Mammography, or other images or film of the human
17 anatomy, used to diagnose, prognose, or treat an
18 illness or other medical condition or to further
19 validate scientific testing or screening.

20 "Biometric information" means any information, regardless
21 of how it is captured, converted, stored or shared, that is



1 based on an individual's biometric identifier and used to
2 identify an individual. Biometric information does not include
3 information derived from items or procedures excluded under the
4 definition of biometric identifiers.

5 "Confidential and sensitive information" means personal
6 information that can be used to uniquely identify an individual,
7 or an individual's account or property. Confidential and
8 sensitive information includes:

- 9 (1) Genetic markers;
- 10 (2) Genetic testing information;
- 11 (3) A unique identifier number used to locate an account
12 or property;
- 13 (4) An account number;
- 14 (5) A personal identification number;
- 15 (6) A pass code;
- 16 (7) A driver's license number; or
- 17 (8) A social security number.

18 "Private entity" means an individual, partnership,
19 corporation, limited liability company, association, or other
20 group, however organized. A private entity does not include:

- 21 (1) A state or county agency; or



1 (2) A clerk, judge, or justice of any state or federal
2 court.

3 "Written release" means informed written consent or, in the
4 context of employment, a release executed by an employee as a
5 condition of employment.

6 § -3 Retention; collection; disclosure; destruction.

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

19 (b) No private entity shall collect, capture, purchase,
20 receive through trade, or otherwise obtain a person's biometric



1 identifier or biometric information, unless the private entity
2 first:

3 (1) Informs the subject or the subject's legally
4 authorized representative, in writing, that a
5 biometric identifier or biometric information is being
6 collected or stored;

7 (2) Informs the subject or the subject's legally
8 authorized representative, in writing, of the specific
9 purpose and length of term for which a biometric
10 identifier or biometric information is being
11 collected, stored, and used; and

12 (3) Receives a written release executed by the subject of
13 the biometric identifier or biometric information, or
14 the subject's legally authorized representative.

15 (c) No private entity in possession of a biometric
16 identifier or biometric information shall sell, lease, trade, or
17 otherwise profit from a person's biometric identifier or
18 biometric information.

19 (d) No private entity in possession of a biometric
20 identifier or biometric information shall disclose, redisclose,



1 or otherwise disseminate a person's biometric identifier or
2 biometric information, unless:

3 (1) The subject of the biometric identifier or biometric
4 information, or the subject's legally authorized
5 representative, provides a written release;

6 (2) The disclosure or redisclosure completes a financial
7 transaction requested or authorized by the subject of
8 the biometric identifier or biometric information, or
9 the subject matter's legally authorized
10 representative;

11 (3) The disclosure or redisclosure is required by state or
12 federal law or county ordinance; or

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

16 (e) Each private entity in possession of a biometric
17 identifier or biometric information shall store, transmit, and
18 protect from disclosure all biometric identifiers and biometric
19 information:

20 (1) Using the reasonable standard of care within the
21 private entity's industry; and



1 (2) In a manner that is at least as protective as the
2 manner in which the private entity stores, transmits,
3 and protects other confidential and sensitive
4 information.

5 § -4 Right of action. (a) Any person aggrieved by a
6 violation of this Act shall have a right of action in a state
7 circuit court or as a supplemental claim in federal district
8 court against the offending party.

9 (b) A prevailing party may recover for each violation:

10 (1) Against a private entity that negligently violates a
11 provision of this Act, liquidated damages of \$1,000,
12 or actual damages, whichever is greater;

13 (2) Against a private entity that intentionally or
14 recklessly violates a provision of this Act,
15 liquidated damages of \$5,000, or actual damages,
16 whichever is greater;

17 (3) Reasonable attorneys' fees and cost, including expert
18 witness fees and other litigation expenses; and

19 (4) Other relief, including injunctive relief, as the
20 court deems appropriate.



1 § -5 Construction. Nothing in this chapter shall be
2 construed to:

- 3 (1) Impact the admission or discovery of biometric
4 identifiers or biometric information in any court
5 action, or before any tribunal, board, agency, or
6 person;
- 7 (2) Conflict with the federal Health Insurance Portability
8 Act of 1996 or any rules promulgated thereunder;
- 9 (3) Apply to a financial institution or affiliate of a
10 financial institution that is subject to Title V of
11 the federal Gramm-Leach-Bliley Act of 1999 and the
12 rules promulgated thereunder;
- 13 (4) Conflict with any state laws or rules requiring data
14 retention; or
- 15 (5) Apply to a contractor, subcontractor, or agent of a
16 state or county agency when working on behalf of the
17 State or county."

18 SECTION 3. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: 



Report Title:

Biometric Identifiers; Biometric Information; Privacy

Description:

Establishes standards for the collection, storage, retention, and destruction of biometric identifiers and biometric information by private entities.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

