

SENATE BILL NO. 554

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

1940S.01I

KRISTINA MARTIN, Secretary

AN ACT

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

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

Section A. Chapter 1, RSMo, is amended by adding thereto
2 six new sections, to be known as sections 1.561, 1.563, 1.566,
3 1.567, 1.569, and 1.572, to read as follows:

1.561. The provisions of sections 1.561 to 1.572 shall
2 be known and may be cited as the "Biometric Information
3 Privacy Act".

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

(1) "Biometric identifier", a retina or iris scan,
4 fingerprint, voiceprint, or scan of hand or face geometry or
5 any other biological characteristic that can be used to
6 uniquely identify an individual. The term "biometric
7 identifier" does not include:

(a) Writing samples; written signatures; photographs
9 or videos, except data generated, captured, or collected
10 from the biological characteristics of a person depicted in
11 a photograph or video; human biological samples used for
12 valid scientific testing or screening; demographic data;
13 tattoo descriptions; or physical descriptions such as
14 height, weight, hair color, or eye color;

15 (b) Donated organ, tissue, or part, as those terms are
16 defined under section 194.210, or blood or serum stored on
17 behalf of recipients or potential recipients of living or
18 cadaveric transplants and obtained or stored by a federally
19 designated organ procurement agency;

20 (c) Information captured from a patient in a health
21 care setting or information collected, used, or stored for
22 health care treatment, payment, or operations under the
23 federal Health Insurance Portability and Accountability Act
24 of 1996, P.L. 104-191; or

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

30 (2) "Biometric information", any information,
31 regardless of how it is captured, converted, stored, or
32 shared, that is based on an individual's biometric
33 identifier and used to identify an individual. The term
34 "biometric information" does not include information derived
35 from items or procedures excluded under the definition of
36 biometric identifiers;

37 (3) "Confidential and sensitive information", personal
38 information that can be used to uniquely identify an
39 individual or an individual's account or property. Examples
40 of "confidential and sensitive information" include, but are
41 not limited to, a genetic marker, genetic testing
42 information, a unique identifier number to locate an account
43 or property, an account number, a PIN number, a pass code, a
44 driver's license number, or a Social Security number;

45 (4) "Private entity", any individual acting in a
46 commercial context, partnership, corporation, limited

47 liability company, association, or other group however
48 organized. The term "private entity" does not include a
49 state or local government agency, any court of Missouri, a
50 clerk of the court, or a judge or justice of the court;

51 (5) "Written release", informed written consent,
52 including written consent provided by electronic means. A
53 valid written release shall not be secured through a general
54 release or user agreement. In the context of employment, a
55 written release:

56 (a) Shall be used only to secure consent to collect
57 and use biometric identifiers for the purposes of:

58 a. Permitting access to secure physical locations and
59 secure electronic hardware and software applications without
60 retaining data that allows for employee location tracking or
61 the tracking of how long an employee spends using a hardware
62 or software application; or

63 b. Recording the commencement and conclusion of an
64 employee's full work day and meal or rest breaks in excess
65 of thirty minutes; and

66 (b) May be secured in the form of a written release
67 executed by an employee as a condition of employment.

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

12 biometric information shall comply with its established
13 retention schedule and destruction guidelines.

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

18 (1) Informs the person or customer, or the person's or
19 customer's legally authorized representative, in writing
20 that a biometric identifier or biometric information is
21 being collected or stored;

22 (2) Informs the person or customer, or the person's or
23 customer's legally authorized representative, of the
24 specific purpose and length of time for which a biometric
25 identifier or biometric information is being collected,
26 stored, and used; and

27 (3) Receives a written release executed by the person
28 or customer, or the person's or customer's legally
29 authorized representative.

30 3. (1) Any entity or individual required to comply
31 with the federal Health Insurance Portability and
32 Accountability Act, P.L. 104-191, 110 Stat. 1936, shall
33 treat biometric identifiers and biometric information as
34 individually identifiable health information and unique
35 health identifiers protected under that act and the rules
36 promulgated thereunder.

37 (2) No private entity in possession of a biometric
38 identifier or biometric information shall sell, lease, or
39 trade a person's or a customer's biometric identifier or
40 biometric information.

41 4. No private entity in possession of a biometric
42 identifier or biometric information shall disclose,
43 redisclose, or otherwise disseminate a person's or a

44 customer's biometric identifier or biometric information
45 unless:

46 (1) The person or customer, or the person's or
47 customer's legally authorized representative, provides
48 written release to the disclosure or redisclosure;

49 (2) The disclosure or redisclosure completes a
50 financial transaction requested or authorized by the person
51 or customer, or the person's or customer's legally
52 authorized representative;

53 (3) The disclosure or redisclosure is required by
54 state law, federal law, or municipal ordinance; or

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

58 5. A private entity in possession of a biometric
59 identifier or biometric information shall:

60 (1) Store, transmit, and protect from disclosure all
61 biometric identifiers and biometric information using the
62 reasonable standard of care within the private entity's
63 industry; and

64 (2) Store, transmit, and protect from disclosure all
65 biometric identifiers and biometric information in a manner
66 that is the same as or more protective than the manner in
67 which the private entity stores, transmits, and protects
68 other confidential and sensitive information.

1.567. A private entity shall not:

2 (1) Condition the provision of a good or service on
3 the collection, use, disclosure, transfer, sale, retention,
4 or processing of a biometric identifier unless the biometric
5 identifier is strictly necessary to provide the good or
6 service; or

7 (2) Charge different prices or rates for goods or
8 services or provide a different level of quality of a good
9 or service to any individual who exercises the individual's
10 rights under sections 1.561 to 1.572.

 1.569. Any person aggrieved by a violation of sections
2 1.561 to 1.572 shall have a cause of action in a circuit
3 court of this state or as a supplemental claim in federal
4 district court against an offending party including, but not
5 limited to, a class action brought pursuant to the rules of
6 the Missouri supreme court. The court shall award all
7 attorney's fees and costs, including expert witness fees and
8 other litigation expenses, to the prevailing plaintiff. A
9 prevailing plaintiff may recover for each violation:

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

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

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

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

6 2. Nothing in sections 1.561 to 1.572 shall be
7 construed to conflict with section 334.097 or with the
8 federal Health Insurance Portability and Accountability Act

9 of 1996, P.L. 104-191, 110 Stat. 1936, or the rules
10 promulgated thereunder.

11 3. Nothing in sections 1.561 to 1.572 shall be deemed
12 to apply in any manner to a financial institution or an
13 affiliate of a financial institution that is subject to
14 Title V of the federal Gramm-Leach-Bliley Act of 1999, P.L.
15 106-102, 113 Stat. 1338 and the rules promulgated thereunder.

16 4. Nothing in sections 1.561 to 1.572 shall be
17 construed to apply to a contractor, subcontractor, or agent
18 of a state agency or local government when working for that
19 state agency or local government.

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