

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1945

H.P. 1450

House of Representatives, January 26, 2022

An Act To Regulate the Use of Biometric Identifiers

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator BAILEY of York and
Representatives: ANDREWS of Paris, FAULKINGHAM of Winter Harbor, Senators:
HICKMAN of Kennebec, MAXMIN of Lincoln.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 1057** is enacted to read:

3 **CHAPTER 1057**

4 **PRIVACY OF PERSONAL INFORMATION**

5 **§9601. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Affirmative written consent.** "Affirmative written consent" means:

9 A. A specific, unambiguous and informed written consent given by an individual who
10 is not under duress or undue influence at the time the consent is given; or

11 B. In the context of employment, a release signed by an employee as a condition of
12 employment.

13 **2. Biometric identifier.** "Biometric identifier" means information generated by
14 measurements of an individual's unique biological characteristics, including imagery of the
15 iris, retina, fingerprint, face or hand, that can be used to identify that individual. "Biometric
16 identifier" does not include:

17 A. A writing sample or written signature;

18 B. A photograph or video, except for measurable biological characteristics that can be
19 generated or captured from a photograph or video;

20 C. A biological sample used for valid scientific testing or screening;

21 D. Demographic information;

22 E. A tattoo description or a physical description, such as height, weight, hair color or
23 eye color;

24 F. A donated organ, tissue or other body part, blood or serum stored on behalf of a
25 recipient or potential recipient of a living or cadaveric transplant and obtained or stored
26 by a federally designated organ procurement organization;

27 G. Information captured from a patient in a health care setting or information collected,
28 used or stored for health care treatment, payment or operations under the federal Health
29 Insurance Portability and Accountability Act of 1996, Public Law 104-191; or

30 H. An x-ray, computed tomography, magnetic resonance imaging, positron emission
31 tomography, mammography or other image or film of the human anatomy used to
32 diagnose or treat an illness or other medical condition or to further validate scientific
33 testing or screening.

34 **3. Personal information.** "Personal information" means information that identifies,
35 relates to, describes, is reasonably capable of being associated with or could reasonably be
36 linked, directly or indirectly, with a particular individual, household or electronic device.

1 4. Private entity. "Private entity" means an individual, partnership, corporation,
2 limited liability company, association or other group, however organized, that conducts
3 business. "Private entity" does not include a state or local government agency, court, judge,
4 justice or clerk of the court.

5 5. Processor. "Processor" means a private entity that collects, processes, stores or
6 otherwise uses biometric identifiers on behalf of another private entity.

7 **§9602. Applicability**

8 1. Processors. A processor is not required to comply with the requirements of this
9 chapter with respect to the biometric identifiers that the processor stores, processes or
10 otherwise uses under an agreement with another private entity with which the processor is
11 not affiliated through common ownership. A processor is required to comply with the
12 requirements of this chapter with respect to the biometric identifiers that the processor
13 collects, stores, processes or uses that are not covered by an agreement with another private
14 entity with which the processor is not affiliated through common ownership.

15 2. General exceptions. This chapter does not apply to:

16 A. The admission or discovery of a biometric identifier in any action of any kind in
17 any court or before any government tribunal, board or agency;

18 B. A requirement under the federal Health Insurance Portability and Accountability
19 Act of 1996, Public Law 104-191 and applicable regulations; or

20 C. A contractor, subcontractor or agent of a state agency or local unit of government
21 when working for that state agency or local unit of government.

22 **§9603. Biometric identifier policy requirements**

23 1. Development of policy. Except as provided by subsection 3, a private entity in
24 possession of biometric identifiers shall develop and make available to the public a written
25 policy that establishes a retention schedule and guidelines for permanently destroying a
26 biometric identifier of an individual on the earlier of:

27 A. The date on which the initial purpose for obtaining the biometric identifier has been
28 satisfied; or

29 B. One year after the individual's last intentional interaction with the private entity in
30 possession of the biometric identifier.

31 2. Adherence to policy. A private entity shall comply with the policy developed by
32 the private entity under subsection 1, except for an action taken in response to a valid
33 warrant or subpoena issued by a court of competent jurisdiction.

34 3. Exception. A private entity is not required to make available to the public a written
35 policy that:

36 A. Applies only to the employees of the private entity; and

37 B. Is used solely within the private entity for the operation of the private entity.

38 4. Violation. A violation of this section is a violation of the Maine Unfair Trade
39 Practices Act.

40 **§9604. Storage, transmission and protection**

1 **1. Standards.** A private entity that collects or possesses a biometric identifier shall
2 store, transmit and protect from disclosure that biometric identifier in a manner that is:

3 A. Consistent with the reasonable standard of care used in the private entity's industry;
4 and

5 B. As protective or more protective than the manner in which the private entity stores,
6 transmits and protects from disclosure other confidential and sensitive information.

7 **2. Confidential and sensitive information.** For purposes of this section, "confidential
8 and sensitive information" means personal information that can be used to identify an
9 individual or an individual's account or property, including:

10 A. Genetic testing information;

11 B. A unique or personal identification number;

12 C. An account number;

13 D. A pass code;

14 E. A driver's license number; and

15 F. A social security number.

16 **§9605. Required disclosure**

17 **1. Disclosure required.** On the request of an individual, a private entity that collects
18 or possesses a biometric identifier shall disclose to that individual, free of charge, any
19 biometric identifier associated with that individual and the information required by
20 subsection 2.

21 **2. Required information.** The information disclosed as required by subsection 1 must
22 include all the relevant information for the period of 12 months before the biometric
23 identifier was collected by or entered into the possession of the private entity, including:

24 A. The type of biometric identifier;

25 B. All personal information related to the biometric identifier;

26 C. The types of sources from which the private entity obtained the biometric identifier
27 and personal information linked to the biometric identifier;

28 D. The use of the biometric identifier and personal information linked to the biometric
29 identifier;

30 E. The type of 3rd party with which the private entity has shared the biometric
31 identifier; and

32 F. The type of personal information linked to the biometric identifier that the private
33 entity has disclosed to a 3rd party.

34 **3. Violation.** A violation of this section is a violation of the Maine Unfair Trade
35 Practices Act.

36 **§9606. Prohibitions**

37 **1. Collection or dissemination without consent.** A private entity may not collect,
38 purchase, receive through trade or otherwise obtain, use, disclose, transfer or otherwise
39 disseminate an individual's biometric identifier unless the private entity first:

1 A. Informs the individual in writing that a biometric identifier is being collected,
2 purchased, received through trade or otherwise obtained, used, disclosed, transferred
3 or otherwise disseminated;

4 B. Informs the individual in writing of the specific purpose and length of time for
5 which a biometric identifier is being collected, purchased, received through trade or
6 otherwise obtained, used, disclosed, transferred or otherwise disseminated; and

7 C. Receives affirmative written consent from the individual.

8 This subsection does not apply to a disclosure of a biometric identifier if the disclosure
9 completes a financial transaction requested or authorized by the individual, is required by
10 state or federal law or municipal ordinance or is required pursuant to a valid warrant or
11 subpoena issued by a court of competent jurisdiction.

12 **2. Sale, lease or trade without consent.** A private entity that is not acting as a
13 processor and that collects a biometric identifier may not sell, lease, trade or otherwise
14 profit from that biometric identifier unless the individual to whom the biometric identifier
15 pertains has provided affirmative written consent for the sale, lease, trade or other activity.

16 **3. Discrimination.** A private entity may not:

17 A. Condition a sale of goods or the provision of a service on the collection, use,
18 disclosure, transfer, sale or processing of a biometric identifier unless the use of a
19 biometric identifier is strictly necessary to the sale of the goods or the provision of the
20 service;

21 B. Charge a different price or rate for goods or the provision of a service to a customer
22 that does not provide affirmative written consent to providing a biometric identifier; or

23 C. Provide a different quality of goods or a service to a customer that does not provide
24 affirmative written consent to providing a biometric identifier.

25 **4. Processors.** A processor may not perform an action related to a biometric identifier
26 unless:

27 A. The processor has received affirmative written consent from the individual to whom
28 the biometric identifier pertains to perform the action; and

29 B. The action falls within the terms and conditions of an agreement between the
30 processor and the private entity that owns or controls the biometric identifier.

31 **5. Violation.** A violation of this section is a violation of the Maine Unfair Trade
32 Practices Act.

33 **§9607. Private right of action**

34 **1. Action for violation.** An individual aggrieved by a violation of this chapter may
35 bring an action against an offending private entity. If the individual prevails in the action,
36 the individual is entitled to:

37 A. For a violation of this chapter:

38 (1) As a result of negligence, actual damages or \$1,000 per violation, whichever
39 is greater; or

40 (2) As a result of recklessness or intentional misconduct, actual damages or \$5,000
41 per violation, whichever is greater;

