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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO HEALTH AND SAFETY -- BIOMETRIC INFORMATION PRIVACY
PROTECTION ACT

Introduced By: Representatives Edwards, Canario, Shanley, and Barros

Date Introduced: April 03, 2019

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 95

4 BIOMETRIC INFORMATION PRIVACY PROTECTION ACT

5 **23-95-1. Short title.**

6 This chapter shall be known and may be cited as the "Biometric Information Privacy
7 Protection Act."

8 **23-95-2. Legislative findings.**

9 It is hereby found and declared as follows:

10 (1) The use of biometrics is growing in the business and security screening sectors and
11 appears to promise streamlined financial transactions and security screenings;

12 (2) Biometrics are unlike other unique identifiers that are used to access finances or other
13 sensitive information. For example, social security numbers, when compromised, can be changed.
14 Biometrics, however, are biologically unique to the individual; therefore, once compromised, the
15 individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from
16 biometric-facilitated transactions;

17 (3) An overwhelming majority of members of the public are weary of the use of
18 biometrics when such information is tied to finances and other personal information;

1 (4) Despite limited state law regulating the collection, use, safeguarding, and storage of
2 biometrics, many members of the public are deterred from partaking in biometric identifier-
3 facilitated transactions;

4 (5) The full ramifications of biometric technology are not fully known; and

5 (6) The public welfare, security, and safety will be served by regulating the collection,
6 use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and
7 information.

8 **23-95-3. Definitions.**

9 As used in this chapter, the following words and phrases have the following meanings:

10 (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of
11 hand or face geometry. Biometric identifiers do not include writing samples, written signatures,
12 photographs, human biological samples used for valid scientific testing or screening,
13 demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color,
14 or eye color. Biometric identifiers do not include donated organs, tissues, parts, blood or serum
15 stored on behalf of recipients or potential recipients of living or cadaveric transplants and
16 obtained or stored by a federally designated organ procurement agency. Biometric identifiers do
17 not include information captured from a patient in a health care setting or information collected,
18 used, or stored for health care treatment, payment, or operations under the federal Health
19 Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-
20 ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or
21 film of the human anatomy used to diagnose, prognose, or treat an illness or other medical
22 condition or to further validate scientific testing or screening.

23 (2) "Biometric information" means any information, regardless of how it is captured,
24 converted, stored, or shared, based on an individual's biometric identifier used to identify an
25 individual. Biometric information does not include information derived from items or procedures
26 excluded under the definition of biometric identifiers.

27 (3) "Confidential and sensitive information" means personal information that can be used
28 to uniquely identify an individual or an individual's account or property. Examples of confidential
29 and sensitive information include, but are not limited to, a genetic marker, genetic testing
30 information, a unique identifier number to locate an account or property, an account number, a
31 PIN number, a pass code, a driver's license number, or a social security number.

32 (4) "Collect" means the capture, purchase, or acquisition of a person's biometric
33 identifier.

34 (5) "Private entity" means any individual, partnership, corporation, limited liability

1 company, association, or other group, however organized. A private entity does not include a
2 state or local government agency.

3 (6) "Retain" means to collect and store a biometric identifier in whatever form for future
4 use as an identifier of an individual.

5 (7) "Security purpose" means the purpose of preventing shoplifting, theft or fraud.

6 (8) "Written release" means informed written consent or, in the context of employment, a
7 release executed by an employee as a condition of employment.

8 **23-95-4. Retention, collection and destruction.**

9 (a) A private entity in possession of biometric identifiers or biometric information shall
10 develop a written policy, made available to the public, establishing a retention schedule and
11 guidelines for permanently destroying biometric identifiers and biometric information when the
12 initial purpose for collecting or obtaining such identifiers or information has been satisfied or
13 within three (3) years of the individual's last interaction with the private entity, whichever occurs
14 first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private
15 entity in possession of biometric identifiers or biometric information must comply with its
16 established retention schedule and destruction guidelines.

17 (b) No private entity may collect, capture, purchase, receive through trade, or otherwise
18 obtain a person's or a customer's biometric identifier or biometric information, unless it first:

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

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

24 (3) Receives a written release executed by the subject of the biometric identifier or
25 biometric information or the subject's legally authorized representative.

26 (c) No private entity in possession of a biometric identifier or biometric information may
27 sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier or
28 biometric information.

29 (d) No private entity in possession of a biometric identifier or biometric information may
30 disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or
31 biometric information unless:

32 (1) The subject of the biometric identifier or biometric information or the subject's legally
33 authorized representative consents to the disclosure or redisclosure;

34 (2) The disclosure or redisclosure completes a financial transaction requested or

1 authorized by the subject of the biometric identifier or the biometric information or the subject's
2 legally authorized representative;

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

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

7 (e) A private entity in possession of a biometric identifier or biometric information shall:

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

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

13 **23-95-5. Exceptions.**

14 The provisions of § 23-95-4 shall not apply to:

15 (1) Law enforcement and correctional custody, including, but not limited to, the
16 identification of perpetrators, prisoners, missing persons, trafficking victims, or human remains;

17 (2) Facial images used to create driver's licenses or other state identification cards;

18 (3) Purposes authorized and conducted pursuant to state or federal law;

19 (4) The retention of voices for quality assurance purposes;

20 (5) Third-party data storage providers or data transmitters, including Internet service
21 providers or mobile carriers, who provide for the storage or transmittal of data only;

22 (6) Instances where a person's biometric identifier is captured and stored within the
23 person's own mobile device, computer device, or home security device where biometric
24 identifiers are captured and stored locally within the device and the biometric identifiers do not
25 transmit away from the device using the Internet or other network;

26 (7) Information collected or retained exclusively for scientific research;

27 (8) Government security-clearance related programs, research and projects; and

28 (9) Information used solely and exclusively for security purposes.

29 **23-95-6. Construction.**

30 (a) Nothing in this chapter shall be construed to impact the admission or discovery of
31 biometric identifiers and biometric information in any action of any kind in any court, or before
32 any tribunal, board, agency, or person.

33 (b) Nothing in this chapter shall be construed to conflict with the federal Health Insurance
34 Portability and Accountability Act of 1996.

1 (c) Nothing in this chapter shall be deemed to apply in any manner to a financial
2 institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-
3 Leach-Bliley Act of 1999 and the rules promulgated thereunder.

4 (d) Nothing in this chapter shall be construed to apply to a contractor, subcontractor, or
5 agent of a state agency or local unit of government when working for that state agency or local
6 unit of government.

7 **23-95-7. Private cause of action.**

8 Any person aggrieved by a violation of this chapter shall have a right of action in a state
9 court or as a supplemental claim in federal district court against an offending party. A prevailing
10 party may recover for each violation:

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

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

16 (3) Reasonable attorneys' fees and costs.

17 **23-95-8. Enforcement by attorney general.**

18 Whenever the attorney general has reason to believe that a person or private entity has
19 violated the provisions of this chapter, and that proceeding would be in the public interest, the
20 attorney general may bring an action in the name of the state or on behalf of persons residing in
21 the state, against the person or private entity to restrain and enjoin the use of methods, acts or
22 practices that are in violation of this chapter.

23 **23-95-9. Severability.**

24 If any part of this chapter shall be deemed invalid, all valid parts that are severable shall
25 remain in full force and effect.

26 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- BIOMETRIC INFORMATION PRIVACY
PROTECTION ACT

1 This act would prohibit the collection and retention of biometric identifiers without
2 consent of the person whose information is collected. Exceptions would be law enforcement,
3 government use, research and government security-clearance related projects.

4 This act would take effect upon passage.

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