

SENATE BILL NO. 1359

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

3364S.011

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to liability for disclosure of biometric information.

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

Section A. Chapter 537, RSMo, is amended by adding thereto
2 one new section, to be known as section 537.323, to read as
3 follows:

537.323. 1. As used in this section, the following
2 terms mean:

3 (1) "Biometric identifier", a retina or iris scan,
4 fingerprint, voiceprint, or scan of hand or face geometry.
5 The term "biometric identifier" shall not include the
6 following:

7 (a) Any writing sample, written signature, photograph,
8 human biological sample used for valid scientific testing or
9 screening, demographic data, tattoo descriptions, or
10 physical descriptions such as height, weight, hair color, or
11 eye color;

12 (b) Any anatomical gift, tissue, or part, as such
13 terms are defined in section 194.210, or any blood or serum
14 stored on behalf of recipients or potential recipients of
15 living or cadaveric transplants and obtained or stored by a
16 federally designated organ procurement organization;

17 (c) Biometric data used in genetic testing, including
18 any direct-to-consumer genetic testing, as such term is
19 defined in 45 CFR 160.103;

20 (d) 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 (HIPAA), P.L. 104-191, as amended; or

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

30 (2) "Biometric information", any information,
31 regardless of how it is captured, converted, stored, or
32 shared, based on an individual's biometric identifier used
33 to identify an individual. The term "biometric information"
34 shall not include information derived from items or
35 procedures provided in paragraphs (a) to (e) of subdivision
36 (1) of this subsection;

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. The term
40 "confidential and sensitive information" includes, but is
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 passcode, a
44 driver's license number, or a Social Security number;

45 (4) "Private entity", any individual, partnership,
46 corporation, limited liability company, or association. The
47 term "private entity" shall not include a state or local
48 government agency, or any employee or agent thereof, or a
49 court of this state, or any clerk, judge, or justice thereof.

50 2. Except as provided in subsection 4 of this section,
51 a private entity in possession of biometric identifiers or

biometric information shall not be liable for damages for the unauthorized or negligent disclosure of biometric identifiers or biometric information if the private entity:

(1) Posts and maintains signs or notices which contain the warning as specified in subsection 3 of this section;

(2) Informs the public and the individual whose biometric identifier or biometric information is being collected, captured, or otherwise obtained of the specific purpose for which the biometric identifier or biometric information is being used;

(3) Develops 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 biometric identifiers or biometric information has been satisfied or within three years of the individual's last interaction with the private entity, whichever occurs first;

(4) Complies with the written policy described in subdivision (3) of this subsection absent a valid warrant or subpoena issued by a court of competent jurisdiction; and

(5) Stores, transmits, and protects from disclosure all biometric identifiers and biometric information 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.

3. Every private entity collecting biometric identifiers shall place a notice in a clearly visible location or if in a written agreement or contract, in clearly readable print, stating the following warning:

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WARNING

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This entity obtains biometric identifiers or biometric information and complies with the collection and retention requirements under Missouri law. This entity shall not be liable for damages for the unauthorized or negligent disclosure of such identifiers or information. Information about this entity's collection and retention schedule is made available to the public.

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4. The provisions of this section shall not be construed to:

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

(2) Conflict with the provisions of section 334.097, the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, as amended, and any rules promulgated thereunder;

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(3) Conflict with the provisions of sections 324.1100 to 324.1148 and any rules promulgated thereunder;

(4) 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, P.L. 106-102, and any rules promulgated thereunder; or

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(5) Create or increase the liability of a private entity and does not affect the availability of any other immunities from or defenses to liability established by law or available under common law to which a private entity may be entitled.

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