

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3647

By: Staires

AS INTRODUCED

An Act relating to biometric information; creating the Biometric Information Privacy Act; providing definitions; directing private entities to develop policy; providing guidelines for policy; directing that certain actions be taken by private entities before obtaining biometric identifiers or information; prohibiting certain uses of biometric information; prohibiting certain dissemination of biometric information; providing exceptions; mandating that private entities follow certain standards in handling biometric identifiers and information; creating a right of action for violation; clarifying recovery for prevailing party; clarifying impact and application of act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2219.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Biometric Information Privacy Act".

1 SECTION 2. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2219.2 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

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

1           2. "Biometric information" means any information, regardless of  
2 how it is captured, converted, stored, or shared, based on an  
3 individual's biometric identifier used to identify an individual.  
4 Biometric information does not include information derived from  
5 items or procedures excluded under the definition of biometric  
6 identifiers;

7           3. "Confidential and sensitive information" means personal  
8 information that can be used to uniquely identify an individual or  
9 an individual's account or property. Examples of confidential and  
10 sensitive information include, but are not limited to, a genetic  
11 marker, genetic testing information, a unique identifier number to  
12 locate an account or property, an account number, a PIN number, a  
13 pass code, a driver license number, or a Social Security number;

14           4. "Private entity" means any individual, partnership,  
15 corporation, limited liability company, association, or other group,  
16 however organized. A private entity does not include a state or  
17 local government agency. A private entity does not include any  
18 court of Oklahoma, a clerk of the court, or a judge or justice  
19 thereof;

20           5. "Written release" means informed written consent or, in the  
21 context of employment, a release executed by an employee as a  
22 condition of employment.  
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1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2219.3 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

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

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

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

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

3 3. Receives a written release executed by the subject of the  
4 biometric identifier or biometric information or the subject's  
5 legally authorized representative.

6 C. No private entity in possession of a biometric identifier or  
7 biometric information may sell, lease, trade, or otherwise profit  
8 from a person's or a customer's biometric identifier or biometric  
9 information.

10 D. No private entity in possession of a biometric identifier or  
11 biometric information may disclose, redisclose, or otherwise  
12 disseminate a person's or a customer's biometric identifier or  
13 biometric information unless:

14 1. The subject of the biometric identifier or biometric  
15 information or the subject's legally authorized representative  
16 consents to the disclosure or redisclosure;

17 2. The disclosure or redisclosure completes a financial  
18 transaction requested or authorized by the subject of the biometric  
19 identifier or the biometric information or the subject's legally  
20 authorized representative;

21 3. The disclosure or redisclosure is required by state or  
22 federal law or municipal ordinance; or

23 4. The disclosure is required pursuant to a valid warrant or  
24 subpoena issued by a court of competent jurisdiction.

1 E. A private entity in possession of a biometric identifier or  
2 biometric information shall:

3 1. Store, transmit, and protect from disclosure all biometric  
4 identifiers and biometric information using the reasonable standard  
5 of care within the private entity's industry; and

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

11 SECTION 4. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 2219.4 of Title 63, unless there  
13 is created a duplication in numbering, reads as follows:

14 Any person aggrieved by a violation of this act shall have a  
15 right of action in a state circuit court or as a supplemental claim  
16 in federal district court against an offending party. A prevailing  
17 party may recover for each violation:

18 1. Against a private entity that negligently violates a  
19 provision of this act, liquidated damages of One Thousand Dollars  
20 (\$1,000.00) or actual damages, whichever is greater;

21 2. Against a private entity that intentionally or recklessly  
22 violates a provision of this act, liquidated damages of Five  
23 Thousand Dollars (\$5,000.00) or actual damages, whichever is  
24 greater;

1 3. Reasonable attorneys' fees and costs, including expert  
2 witness fees and other litigation expenses;

3 4. Other relief, including an injunction, as the state or  
4 federal court may deem appropriate.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 2219.5 of Title 63, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. Nothing in this act shall be construed to impact the  
9 admission or discovery of biometric identifiers and biometric  
10 information in any action of any kind in any court, or before any  
11 tribunal, board, agency, or person.

12 B. Nothing in this act shall be construed to conflict with the  
13 federal Health Insurance Portability and Accountability Act of 1996  
14 and the rules promulgated under that act.

15 C. Nothing in this act shall be deemed to apply in any manner  
16 to a financial institution or an affiliate of a financial  
17 institution that is subject to Title V of the federal Gramm-Leach-  
18 Bliley Act of 1999 and the rules promulgated thereunder.

19 D. Nothing in this act shall be construed to apply to a  
20 contractor, subcontractor, or agent of a state agency or local unit  
21 of government when working for that state agency or local unit of  
22 government.

1 SECTION 6. This act shall become effective November 1, 2024.

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