

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

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

5 As used in this act:

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

2 A new section of law to be codified
3 in the Oklahoma Statutes as Section 2219.3 of Title 63, unless there
4 is created a duplication in numbering, reads as follows:

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

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

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

23 2. Informs the subject or the subject's legally authorized
24 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.
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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.

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

59-2-9118 MJ 12/21/23