

ASSEMBLY, No. 3625

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 5, 2020

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Co-Sponsored by:

Assemblywoman Carter, Assemblyman Benson and Assemblywoman Pinkin

SYNOPSIS

Imposes moratorium on collection of biometric identifiers by public entities and requires AG to recommend appropriate uses; restricts private use of biometric information.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/7/2020)

1 AN ACT concerning biometric information and supplementing Title
2 52 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 “Biometric identifier” means data generated by measurements of
9 a person’s immutable physical or behavioral characteristics and
10 includes, but is not limited to, a retina or iris scan, a fingerprint, a
11 scan of hand or face geometry, or characteristics of a person’s gait
12 or voice.

13 “Biometric information” means any information, regardless of
14 how it is captured, converted, stored, or shared, based on a person’s
15 biometric identifier used to identify a person. Biometric information
16 shall not include information derived from DNA.

17 “Confidential and sensitive information” means personal
18 information that can be used to uniquely identify a person or a
19 person’s account or property and includes, but is not limited to, a
20 unique identifier number to locate an account or property, an
21 account number, a PIN number, a pass code, a driver’s license
22 number, or a social security number.

23 “Private entity” means any person, partnership, corporation,
24 limited liability company, association, or other group, however
25 organized. A private entity shall not include a State or local
26 government agency or any court or judge thereof.

27 “Public entity” means the State, and any county, municipality,
28 district, or any political subdivision, department, authority, agency,
29 bureau, commission, agency, board, or body thereof; or any officer,
30 employee, agent, contractor, or subcontractor of a public entity.

31 “Written release” means informed written consent or, in the
32 context of employment, a release executed by an employee as a
33 condition of employment.

34

35 2. a. A public entity shall not acquire, possess, access, collect,
36 capture, purchase, receive through trade, or otherwise obtain or use
37 a person’s biometric identifier or biometric information.

38 b. Any person aggrieved by a violation of this section may
39 institute proceedings for injunctive or declaratory relief in any court
40 of competent jurisdiction to enforce this section, and the person
41 shall be entitled to recover for each violation:

42 (1) against a public entity that negligently violates a provision of
43 this section, liquidated damages of \$ 1,000 or actual damages,
44 whichever is greater;

45 (2) against a public entity that intentionally or recklessly violates
46 a provision of this section, liquidated damages of \$ 5,000 or actual
47 damages, whichever is greater;

1 (3) reasonable attorneys' fees and costs, including expert witness
2 fees and other litigation expenses; and

3 (4) any other relief the court deems appropriate.

4 c. Biometric information obtained in violation of this section
5 shall not be admissible in any criminal, civil, administrative, or
6 other proceeding, except in a judicial proceeding alleging a
7 violation of this section.

8

9 3. a. The Attorney General shall submit to the Legislature no
10 later than one year after the effective date of P.L. , c. (C.)
11 (pending before the Legislature as this bill) recommendations for
12 legislation concerning the appropriate use of a biometric identifier
13 or biometric information by a public entity in the State. The
14 recommendations shall include, but not be limited to:

15 (1) the public entities to be permitted to use a biometric
16 identifier or biometric information, the purposes for the use, and
17 identification of prohibited uses;

18 (2) the necessary training required for a public entity to use a
19 biometric identifier or biometric information;

20 (3) standards for the use and management of information
21 derived from a biometric identifier or biometric information,
22 including but not limited to data retention, sharing, access, and
23 audit trails;

24 (4) auditing practices to ensure the accuracy of a biometric
25 identifier or biometric information, standards for minimum
26 accuracy rates, and accuracy rates by gender, skin color, and age;

27 (5) rigorous protections for due process, privacy, free speech
28 and association, and racial, gender, and religious equity; and

29 (6) mechanisms to ensure compliance.

30 b. Following submission of the recommendations required
31 pursuant to subsection a. of this section, the Legislature shall hold
32 at least one public hearing for the purpose of obtaining comments
33 on the recommendations.

34 c. The Legislature shall evaluate the recommendations and
35 comments obtained at the public hearing required pursuant to
36 subsection b. of this section to determine whether and to what
37 extent the use of a biometric identifier or biometric information
38 should be authorized for use by a public entity in the State.

39

40 4. a. A private entity in possession of biometric identifiers or
41 biometric information shall develop a written policy, made
42 available to the public, establishing a retention schedule and
43 guidelines for permanently destroying biometric identifiers and
44 biometric information when the initial purpose for collecting or
45 obtaining the identifiers or information has been satisfied or within
46 three years of the person's last interaction with the private entity,
47 whichever occurs first. Unless otherwise provided in a valid
48 warrant or subpoena issued by a court of competent jurisdiction, a

1 private entity in possession of a biometric identifier or biometric
2 information shall comply with its established retention schedule and
3 destruction guidelines.

4 b. A private entity shall not acquire, possess, access, collect,
5 capture, purchase, receive through trade, or otherwise obtain or use
6 a person's biometric identifier or biometric information, unless it
7 first:

8 (1) informs the person or the person's legally authorized
9 representative in writing that a biometric identifier or biometric
10 information is being collected or stored;

11 (2) informs the person or the person's legally authorized
12 representative in writing of the specific purpose and length of term
13 for which a biometric identifier or biometric information is being
14 collected, stored, and used; and

15 (3) receives a written release executed by the person or the
16 person's legally authorized representative.

17 c. A private entity in possession of a biometric identifier or
18 biometric information shall not sell, lease, trade, or otherwise profit
19 from a person's biometric identifier or biometric information.

20 d. A private entity in possession of a biometric identifier or
21 biometric information shall not disclose, redisclose, or otherwise
22 disseminate a person's biometric identifier or biometric information
23 unless:

24 (1) the person or the person's legally authorized representative
25 consents to the disclosure or redisclosure;

26 (2) the disclosure or redisclosure completes a financial
27 transaction requested or authorized by the person or the person's
28 legally authorized representative;

29 (3) the disclosure or redisclosure is required by State or federal
30 law or municipal ordinance; or

31 (4) the disclosure is required pursuant to a valid warrant or
32 subpoena issued by a court of competent jurisdiction.

33 e. A private entity in possession of a biometric identifier or
34 biometric information shall:

35 (1) store, transmit, and protect from disclosure all biometric
36 identifiers and biometric information using the reasonable standard
37 of care within the private entity's industry; and

38 (2) store, transmit, and protect from disclosure all biometric
39 identifiers and biometric information in a manner that is the same as
40 or more protective than the manner in which the private entity
41 stores, transmits, and protects other confidential and sensitive
42 information.

43 f. Biometric information obtained in violation of this section
44 shall not be admissible in any criminal, civil, administrative, or
45 other proceeding, except in a judicial proceeding alleging a
46 violation of this section.

1 extent the use of a biometric identifier or biometric information by
2 public entities should be authorized in the State.

3 Under the bill, a private entity in possession of biometric
4 identifiers or biometric information is required to develop a written
5 policy, made available to the public, establishing a retention
6 schedule and guidelines for the destruction of biometric identifiers
7 and biometric information. These private entities are required to
8 comply with the established retention schedule and destruction
9 guidelines, unless otherwise provided in a valid warrant or
10 subpoena issued by a court of competent jurisdiction.

11 A private entity is prohibited from acquiring, possessing,
12 accessing, collecting, capturing, purchasing, receiving through
13 trade, or otherwise obtaining or using a person's biometric identifier
14 or biometric information, unless it first: informs the person or the
15 person's legally authorized representative in writing that a
16 biometric identifier or biometric information is being collected or
17 stored; informs the person or the person's legally authorized
18 representative in writing of the specific purpose and length of term
19 for which a biometric identifier or biometric information is being
20 collected, stored, and used; and receives a written release executed
21 by the person or the person's legally authorized representative.

22 The bill also prohibits a private entity in possession of a
23 biometric identifier or biometric information from selling, leasing,
24 trading, or otherwise profiting from a person's biometric identifier
25 or biometric information.

26 A private entity in possession of a biometric identifier or
27 biometric information is prohibited from disclosing, redisclosing, or
28 otherwise disseminating a person's biometric identifier or biometric
29 information unless: the person or the person's legally authorized
30 representative consents to the disclosure or redisclosure; the
31 disclosure or redisclosure completes a financial transaction
32 requested or authorized by the person or the person's legally
33 authorized representative; the disclosure or redisclosure is required
34 by State or federal law or municipal ordinance; or the disclosure is
35 required pursuant to a valid warrant or subpoena issued by a court
36 of competent jurisdiction.

37 A private entity in possession of a biometric identifier or
38 biometric information is required under the bill to: store, transmit,
39 and protect from disclosure all biometric identifiers and biometric
40 information using the reasonable standard of care within the private
41 entity's industry; and store, transmit, and protect from disclosure all
42 biometric identifiers and biometric information in a manner that is
43 the same as or more protective than the manner in which the private
44 entity stores, transmits, and protects other confidential and sensitive
45 information, as defined under the bill.

46 The bill provides that biometric information obtained in violation
47 of the bill is not to be admissible in any criminal, civil,
48 administrative, or other proceeding, except in a judicial proceeding

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1 alleging a violation of the bill's provisions. A person is authorized
2 under the bill to institute proceedings for injunctive or declaratory
3 relief for a violation of the bill's provisions. A person is entitled to
4 recover liquidated damages of \$1,000 or actual damages, whichever
5 is greater, against a public or private entity that negligently violates
6 a provision of the bill; liquidated damages of \$5,000 or actual
7 damages, whichever is greater against a public or private entity that
8 intentionally or recklessly violates a provision of the bill;
9 reasonable attorneys' fees and costs, including expert witness fees
10 and other litigation expenses; and any other relief the court deems
11 appropriate.