

STATE OF NEW YORK

4457--A

2023-2024 Regular Sessions

IN SENATE

February 9, 2023

Introduced by Sen. LIU -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to biometric privacy

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article
2 32-A to read as follows:

3 ARTICLE 32-A
4 BIOMETRIC PRIVACY ACT

5 Section 676. Short title.

6 676-a. Definitions.

7 676-b. Retention; collection; disclosure; destruction.

8 676-c. Regulatory authority and enforcement.

9 676-d. Construction with other laws.

10 676-e. Severability.

11 § 676. Short title. This article shall be known and may be cited as
12 the "biometric privacy act".

13 § 676-a. Definitions. As used in this article: 1. "Biometric identifier"
14 means a retina or iris scan, fingerprint, voiceprint, or scan of
15 hand or face geometry. Biometric identifiers shall not include writing
16 samples, written signatures, photographs, human biological samples used
17 for valid scientific testing or screening, demographic data, tattoo
18 descriptions, or physical descriptions such as height, weight, hair
19 color, or eye color. Biometric identifiers shall not include donated
20 body parts as defined in section forty-three hundred of the public
21 health law or blood or serum stored on behalf of recipients or potential
22 recipients of living or cadaveric transplants and obtained or stored by
23 a federally designated organ procurement agency. Biometric identifiers
24 do not include information captured from a patient in a health care
25 setting or information collected, used, or stored for health care treat-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD01142-02-4

1 ment, payment, or operations under the federal Health Insurance Porta-
2 bility and Accountability Act of 1996. Biometric identifiers do not
3 include an X-ray, roentgen process, computed tomography, magnetic reso-
4 nance imaging, positron-emission tomography scan, mammography, or other
5 image or film of the human anatomy used to diagnose, prognose, or treat
6 an illness or other medical condition or to further validate scientific
7 testing or screening.

8 2. "Biometric information" means any information, regardless of how it
9 is captured, converted, stored, or shared, based on an individual's
10 biometric identifier used to identify an individual. Biometric informa-
11 tion shall not include information derived from items or procedures
12 excluded under the definition of biometric identifiers.

13 3. "Confidential and sensitive information" means personal information
14 that can be used to uniquely identify an individual or an individual's
15 account or property which shall include, but shall not be limited to, a
16 genetic marker, genetic testing information, a unique identifier number
17 to locate an account or property, an account number, a personal iden-
18 tification number, a pass code, a driver's license number, or a social
19 security number.

20 4. "Private entity" means any individual, partnership, corporation,
21 limited liability company, association, or other group, however organ-
22 ized. A private entity shall not include a state or local government
23 agency or any court in the state, a clerk of the court, or a judge or
24 justice thereof.

25 5. "Written release" means informed written consent or, in the context
26 of employment, a release executed by an employee as a condition of
27 employment.

28 § 676-b. Retention; collection; disclosure; destruction. 1. A private
29 entity in possession of biometric identifiers or biometric information
30 must develop a written policy, made available to the public, establish-
31 ing a retention schedule and guidelines for permanently destroying biom-
32 etric identifiers and biometric information within a reasonable time,
33 but in no event later than sixty days, after it is no longer necessary
34 to maintain for the permissible purpose or purposes identified in the
35 notice or for which the individual provided valid authorization or with-
36 in three years of the individual's last interaction with the private
37 entity, whichever occurs first. Absent a valid warrant or subpoena
38 issued by a court of competent jurisdiction, a private entity in
39 possession of biometric identifiers or biometric information must comply
40 with its established retention schedule and destruction guidelines.

41 2. No private entity may collect, capture, purchase, receive through
42 trade, or otherwise obtain a person's or a customer's biometric identi-
43 fier or biometric information, unless it first:

44 (a) informs the subject or the subject's legally authorized represen-
45 tative in writing that a biometric identifier or biometric information
46 is being collected or stored;

47 (b) informs the subject or the subject's legally authorized represen-
48 tative in writing of the specific purpose and length of term for which a
49 biometric identifier or biometric information is being collected,
50 stored, and used; and

51 (c) receives a written release executed by the subject of the biome-
52 tric identifier or biometric information or the subject's legally
53 authorized representative.

54 3. No private entity in possession of a biometric identifier or biome-
55 tric information may sell, lease, trade, or otherwise profit from a
56 person's or a customer's biometric identifier or biometric information.

1 4. No private entity in possession of a biometric identifier or biome-
2 tric information may disclose, redisclose, or otherwise disseminate a
3 person's or a customer's biometric identifier or biometric information
4 unless:

5 (a) the subject of the biometric identifier or biometric information
6 or the subject's legally authorized representative consents to the
7 disclosure or redisclosure;

8 (b) the disclosure or redisclosure completes a financial transaction
9 requested or authorized by the subject of the biometric identifier or
10 the biometric information or the subject's legally authorized represen-
11 tative;

12 (c) the disclosure or redisclosure is required by federal, state or
13 local law or municipal ordinance; or

14 (d) the disclosure is required pursuant to a valid warrant or subpoena
15 issued by a court of competent jurisdiction.

16 5. A private entity in possession of a biometric identifier or biome-
17 tric information shall:

18 (a) store, transmit, and protect from disclosure all biometric identi-
19 fiers and biometric information using the reasonable standard of care
20 within the private entity's industry; and

21 (b) store, transmit, and protect from disclosure all biometric identi-
22 fiers and biometric information in a manner that is the same as or more
23 protective than the manner in which the private entity stores, trans-
24 mits, and protects other confidential and sensitive information.

25 § 676-c. Regulatory authority and enforcement. 1.(a) The attorney
26 general is authorized and empowered to adopt, promulgate, amend and
27 rescind suitable rules and regulations to carry out the provisions of
28 this article, including rules governing the form and content of any
29 disclosures or communications required by this article.

30 (b) Whenever it appears to the attorney general, either upon
31 complaint or otherwise, that any person or persons has engaged in or
32 is about to engage in any of the acts or practices stated to be unlaw-
33 ful under this article, the attorney general may bring an action or
34 special proceeding in the name and on behalf of the people of the state
35 of New York to enjoin any violation of this article, to obtain restitu-
36 tion of any moneys or property obtained directly or indirectly by any
37 such violation, to obtain disgorgement of any profits obtained
38 directly or indirectly by any such violation, to obtain civil penalties
39 of not more than twenty thousand dollars per violation, and to obtain
40 any such other and further relief as the court may deem proper, includ-
41 ing preliminary relief.

42 (c) Each instance of unlawful processing counts as a separate
43 violation. Unlawful processing of the personal data of more than one
44 consumer counts as a separate violation as to each consumer. Each
45 provision of this article that is violated counts as a separate
46 violation.

47 (d) In assessing the amount of penalties, the court must consider
48 anyone or more of the relevant circumstances presented by any of
49 the parties, including, but not limited to, the nature and seriousness
50 of the misconduct, the number of violations, the persistence of the
51 misconduct, the length of time over which the misconduct occurred, the
52 willfulness of the violator's misconduct, and the violator's finan-
53 cial condition.

54 2. Any action or special proceeding brought by the attorney general
55 pursuant to this section must be commenced within six years of the date
56 on which the attorney general became aware of the violation.

1 3. In connection with any proposed action or special proceeding under
2 this section, the attorney general is authorized to take proof and make
3 a determination of the relevant facts, and to issue subpoenas in accord-
4 ance with the civil practice law and rules. The attorney general may
5 also require such other data and information as the attorney general may
6 deem relevant and may require written responses to questions under
7 oath. Such power of subpoena and examination shall not abate or termi-
8 nate by reason of any action or special proceeding brought by the
9 attorney general under this article.

10 4. Any person, within or outside the state, who the attorney general
11 believes may be in possession, custody, or control of any books, papers,
12 or other things, or may have information, relevant to acts or practices
13 stated to be unlawful in this article is subject to the service of a
14 subpoena issued by the attorney general pursuant to this section.
15 Service may be made in any manner that is authorized for service of a
16 subpoena or a summons by the state in which service is made.

17 5.(a) Failure to comply with a subpoena issued pursuant to this
18 section without reasonable cause tolls the applicable statutes of limi-
19 tations in any action or special proceeding brought by the attorney
20 general against the noncompliant person that arises out of the attorney
21 general's investigation.

22 (b) If a person fails to comply with a subpoena issued pursuant to
23 this section, the attorney general may move in the supreme court to
24 compel compliance. If the court finds that the subpoena was authorized,
25 it shall order compliance and may impose a civil penalty of up to one
26 thousand dollars per day of noncompliance.

27 (c) Such tolling and civil penalty shall be in addition to any other
28 penalties or remedies provided by law for noncompliance with a subpoena.

29 6. This section shall apply to all acts declared to be unlawful under
30 this article, whether or not subject to any other law of this state, and
31 shall not supersede, amend or repeal any other law of this state under
32 which the attorney general is authorized to take any action or conduct
33 any inquiry.

34 § 676-d. Construction with other laws. 1. Nothing in this article
35 shall be construed to impact the admission or discovery of biometric
36 identifiers and biometric information in any action of any kind in any
37 court, or before any tribunal, board, agency, or person.

38 2. Nothing in this article shall be construed to conflict with the
39 federal Health Insurance Portability and Accountability Act of 1996.

40 3. Nothing in the article shall be deemed to apply in any manner to a
41 financial institution or an affiliate of a financial institution that is
42 subject to Title V of the federal Gramm-Leach-Bliley Act of 1999.

43 4. Nothing in this article shall be construed to apply to a contrac-
44 tor, subcontractor, or agent of a state agency of local government when
45 working for that state agency of local government.

46 § 676-e. Severability. If any provision of this article, or any appli-
47 cation of any provision of this article, is held to be invalid, that
48 shall not affect the validity or effectiveness of any other provision of
49 this article, or of any other application of any provision of this arti-
50 cle, which can be given effect without that provision or application;
51 and to that end, the provisions and applications of this article are
52 severable.

53 § 2. This act shall take effect on the ninetieth day after it shall
54 have become a law.