

STATE OF NEW YORK

1362--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. GUNTHER, VANEL, EPSTEIN, REYES, SAYEGH, COOK, ZEBROWSKI, CRUZ, HYNDMAN, GLICK, DICKENS, SMULLEN, J. M. GIGLIO, McDONOUGH, BLANKENBUSH, LUPARDO, EACHUS, KELLES, BENDETT, GALLAHAN, SIMON, GANDOLFO, BRABENEC -- Multi-Sponsored by -- M. of A. ANGELINO -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- 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:

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

ARTICLE 32-A BIOMETRIC PRIVACY ACT

Section 676. Short title.

676-a. Definitions.

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

676-c. Regulatory authority and enforcement.

676-d. Construction with other laws.

676-e. Severability.

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

§ 676-a. Definitions. As used in this article: 1. "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers shall not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair

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

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1 color, or eye color. Biometric identifiers shall not include donated
2 body parts as defined in section forty-three hundred of the public
3 health law or blood or serum stored on behalf of recipients or potential
4 recipients of living or cadaveric transplants and obtained or stored by
5 a federally designated organ procurement agency. Biometric identifiers
6 do not include information captured from a patient in a health care treat-
7 ment, payment, or operations under the federal Health Insurance Porta-
8 bility and Accountability Act of 1996. Biometric identifiers do not
9 include an X-ray, roentgen process, computed tomography, magnetic reso-
10 nance imaging, positron-emission tomography scan, mammography, or other
11 image or film of the human anatomy used to diagnose, prognose, or treat
12 an illness or other medical condition or to further validate scientific
13 testing or screening.

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

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

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

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

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

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

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

53 (b) informs the subject or the subject's legally authorized represen-
54 tative in writing of the specific purpose and length of term for which a
55

1 biometric identifier or biometric information is being collected,
2 stored, and used; and

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

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

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

13 (a) the subject of the biometric identifier or biometric information
14 or the subject's legally authorized representative consents to the
15 disclosure or redisclosure;

16 (b) the disclosure or redisclosure completes a financial transaction
17 requested or authorized by the subject of the biometric identifier or
18 the biometric information or the subject's legally authorized represen-
19 tative;

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

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

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

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

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

33 § 676-c. Regulatory authority and enforcement. 1.(a) The attorney
34 general is authorized and empowered to adopt, promulgate, amend and
35 rescind suitable rules and regulations to carry out the provisions of
36 this article, including rules governing the form and content of any
37 disclosures or communications required by this article.

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

50 (c) Each instance of unlawful processing counts as a separate
51 violation. Unlawful processing of the personal data of more than one
52 consumer counts as a separate violation as to each consumer. Each
53 provision of this article that is violated counts as a separate
54 violation.

55 (d) In assessing the amount of penalties, the court must consider
56 anyone or more of the relevant circumstances presented by any of

1 the parties, including, but not limited to, the nature and seriousness
2 of the misconduct, the number of violations, the persistence of the
3 misconduct, the length of time over which the misconduct occurred, the
4 willfulness of the violator's misconduct, and the violator's finan-
5 cial condition.

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

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

18 4. Any person, within or outside the state, who the attorney general
19 believes may be in possession, custody, or control of any books, papers,
20 or other things, or may have information, relevant to acts or practices
21 stated to be unlawful in this article is subject to the service of a
22 subpoena issued by the attorney general pursuant to this section.
23 Service may be made in any manner that is authorized for service of a
24 subpoena or a summons by the state in which service is made.

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

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

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

37 6. This section shall apply to all acts declared to be unlawful under
38 this article, whether or not subject to any other law of this state, and
39 shall not supersede, amend or repeal any other law of this state under
40 which the attorney general is authorized to take any action or conduct
41 any inquiry.

42 § 676-d. Construction with other laws. 1. Nothing in this article
43 shall be construed to impact the admission or discovery of biometric
44 identifiers and biometric information in any action of any kind in any
45 court, or before any tribunal, board, agency, or person.

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

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

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

54 § 676-e. Severability. If any provision of this article, or any appli-
55 cation of any provision of this article, is held to be invalid, that
56 shall not affect the validity or effectiveness of any other provision of

1 this article, or of any other application of any provision of this arti-
2 cle, which can be given effect without that provision or application;
3 and to that end, the provisions and applications of this article are
4 severable.

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