

SENATE
STATE OF MINNESOTA
NINETY-FOURTH SESSION

S.F. No. 2260

(SENATE AUTHORS: LUCERO)

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Introduction and first reading

OFFICIAL STATUS

Referred to Commerce and Consumer Protection

1.1 A bill for an act
 1.2 relating to private data; establishing standards for biometric privacy; establishing
 1.3 a right of action; proposing coding for new law in Minnesota Statutes, chapter
 1.4 325E.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **325E.86] BIOMETRIC PRIVACY.**

1.7 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms in this subdivision
 1.8 have the meanings given.

1.9 (b) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of
 1.10 hand or face geometry. Biometric identifiers shall not include writing samples, written
 1.11 signatures, photographs, human biological samples used for valid scientific testing or
 1.12 screening, demographic data, tattoo descriptions, or physical descriptions such as height,
 1.13 weight, hair color, or eye color. Biometric identifiers shall not include anatomical gifts as
 1.14 defined in section 525A.02 or blood or serum stored on behalf of recipients or potential
 1.15 recipients of living or cadaveric transplants and obtained or stored by a federally designated
 1.16 organ procurement agency. Biometric identifiers do not include information captured from
 1.17 a patient in a health care setting or information collected, used, or stored for health care
 1.18 treatment, payment, or operations under the federal Health Insurance Portability and
 1.19 Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process,
 1.20 computed tomography, magnetic resonance imaging, positron-emission tomography scan,
 1.21 mammography, or other image or film of the human anatomy used to diagnose, prognose,
 1.22 or treat an illness or other medical condition or to further validate scientific testing or
 1.23 screening.

2.1 (c) "Biometric information" means any information, regardless of how it is captured,
2.2 converted, stored, or shared, based on an individual's biometric identifier used to identify
2.3 an individual. Biometric information shall not include information derived from items or
2.4 procedures excluded under the definition of biometric identifiers.

2.5 (d) "Confidential and sensitive information" means personal information that can be
2.6 used to uniquely identify an individual or an individual's account or property which shall
2.7 include, but shall not be limited to, a genetic marker, genetic testing information, a unique
2.8 identifier number to locate an account or property, an account number, a personal
2.9 identification number, a pass code, a driver's license number, or a social security number.

2.10 (e) "Private entity" means any individual, partnership, corporation, limited liability
2.11 company, association, or other group, however organized. A private entity shall not include
2.12 a state or local government agency or any court in the state, a clerk of the court, or a judge
2.13 or justice of the court.

2.14 (f) "Written release" means informed written consent or, in the context of employment,
2.15 a release executed by an employee as a condition of employment.

2.16 Subd. 2. **Retention; collection; disclosure; destruction.** (a) A private entity in possession
2.17 of biometric identifiers or biometric information must develop a written policy, made
2.18 available to the public, establishing a retention schedule and guidelines for permanently
2.19 destroying biometric identifiers and biometric information when the initial purpose for
2.20 collecting or obtaining such identifiers or information has been satisfied or within three
2.21 years of the individual's last interaction with the private entity, whichever occurs first.
2.22 Absent a valid warrant or subpoena issued by a court, a private entity in possession of
2.23 biometric identifiers or biometric information must comply with its established retention
2.24 schedule and destruction guidelines.

2.25 (b) No private entity may collect, capture, purchase, receive through trade, or otherwise
2.26 obtain a person's or a customer's biometric identifier or biometric information, unless it
2.27 first:

2.28 (1) informs the subject or the subject's legally authorized representative in writing that
2.29 a biometric identifier or biometric information is being collected or stored;

2.30 (2) informs the subject or the subject's legally authorized representative in writing of
2.31 the specific purpose and length of term for which a biometric identifier or biometric
2.32 information is being collected, stored, and used; and

3.1 (3) receives a written release executed by the subject of the biometric identifier or
3.2 biometric information or the subject's legally authorized representative.

3.3 (c) No private entity in possession of a biometric identifier or biometric information
3.4 may sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier
3.5 or biometric information.

3.6 (d) No private entity in possession of a biometric identifier or biometric information
3.7 may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric
3.8 identifier or biometric information unless:

3.9 (1) the subject of the biometric identifier or biometric information or the subject's legally
3.10 authorized representative consents to the disclosure or redisclosure;

3.11 (2) the disclosure or redisclosure completes a financial transaction requested or authorized
3.12 by the subject of the biometric identifier or the biometric information or the subject's legally
3.13 authorized representative;

3.14 (3) the disclosure or redisclosure is required by federal, state, or local law or municipal
3.15 ordinance; or

3.16 (4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court.

3.17 (e) A private entity in possession of a biometric identifier or biometric information shall:

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

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

3.23 Subd. 3. **Right of action.** Any person aggrieved by a violation of this section shall have
3.24 a right of action in district court against an offending party. A prevailing party may recover
3.25 for each violation:

3.26 (1) against a private entity that negligently violates a provision of this section, liquidated
3.27 damages of \$1,000 or actual damages, whichever is greater;

3.28 (2) against a private entity that intentionally or recklessly violates a provision of this
3.29 section, liquidated damages of \$5,000 or actual damages, whichever is greater;

3.30 (3) reasonable attorney fees and costs, including expert witness fees and other litigation
3.31 expenses; and

4.1 (4) other relief, including an injunction, as the court may deem appropriate.

4.2 Subd. 4. **Construction with other laws.** (a) Nothing in this section shall be construed
4.3 to impact the admission or discovery of biometric identifiers and biometric information in
4.4 any action of any kind in any court, or before any tribunal, board, agency, or person.

4.5 (b) Nothing in this section shall be construed to conflict with the federal Health Insurance
4.6 Portability and Accountability Act of 1996.

4.7 (c) Nothing in this section shall be deemed to apply in any manner to a financial institution
4.8 or an affiliate of a financial institution that is subject to Title V of the federal
4.9 Gramm-Leach-Bliley Act of 1999.

4.10 (d) Nothing in this section shall be construed to apply to a contractor, subcontractor, or
4.11 agent of a state agency or local government when working for that state agency or local
4.12 government.