



NATIONAL CONFERENCE OF STATE LEGISLATURES

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**Comparison of State Laws Regulating the Collection, Use and Retention of Biometric Data by Private Entities**

	<b>Illinois Biometric Information Privacy Act</b> <a href="#">740 ILCS 14/</a>	<b>Texas</b> <a href="#">Tex. Bus &amp; Govt. Code § 503.001</a>	<b>Washington</b> <a href="#">RCW 19.375.010</a> to <a href="#">RCW 19.375.900</a>
<b>Statement of Intent</b>	Yes	No	Yes
<b>Definitions</b>	<p>"Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.</p> <p>Biometric identifiers do 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 color, or eye color."</p>	<p>"Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.</p>	<p>"Biometric identifier" means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that is used to identify a specific individual.</p> <p>"Biometric identifier" does not include a physical or digital photograph, video or audio recording or data generated therefrom, or information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996.</p>

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<b>Notice and consent</b>	<p>(b) No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:</p> <p>(1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;</p> <p>(2) informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and</p> <p>(3) receives a <b>written</b> release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.</p>	<p>A person may not capture a biometric identifier of an individual for a <b>commercial purpose</b> unless the person:</p> <p>(1) informs the individual before capturing the biometric identifier; and</p> <p>(2) receives the individual's consent to capture the biometric identifier.</p>	<p>(1) A person may not enroll a biometric identifier in a database for a <b>commercial purpose</b>, without first providing notice, obtaining consent, or providing a mechanism to prevent the subsequent use of a biometric identifier for a commercial purpose.</p>
<b>Security measures</b>	<p>(e) A private entity in possession of a biometric identifier or biometric information shall:</p> <p>(1) store, transmit, and protect from disclosure all biometric identifiers and biometric information using the reasonable standard of care within the private entity's industry; and</p> <p>(2) store, transmit, and protect from disclosure all biometric identifiers and biometric information in a manner that is the same as or more protective than the manner in which the private entity stores, transmits, and protects other confidential and sensitive information.</p>	<p>(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the person stores, transmits, and protects any other confidential information the person possesses</p>	<p>(4) A person who knowingly possesses a biometric identifier of an individual that has been enrolled for a commercial purpose:</p> <p>(a) Must take reasonable care to guard against unauthorized access to and acquisition of biometric identifiers that are in the possession or under the control of the person;</p>

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<b>Disclosure to Third Parties</b>	<p>(c) No private entity in possession of a biometric identifier or biometric information may sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier or biometric information.</p> <p>(d) No private entity in possession of a biometric identifier or biometric information may disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or biometric information unless:</p> <p>(1) the subject of the biometric identifier or biometric information or the subject's legally authorized representative consents to the disclosure or redisclosure;</p> <p>(2) the disclosure or redisclosure completes a financial transaction requested or authorized by the subject of the biometric identifier or the biometric information or the subject's legally authorized representative;</p> <p>(3) the disclosure or redisclosure is required by state or federal law or municipal ordinance; or</p> <p>(4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of competent jurisdiction.</p>	<p>(c) A person who possesses a biometric identifier of an individual that is captured for a commercial purpose:</p> <p>(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:</p> <p>(A) the individual consents to the disclosure for identification purposes in the event of the individual's disappearance or death;</p> <p>(B) the disclosure completes a financial transaction that the individual requested or authorized;</p> <p>(C) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552, Government Code; or</p> <p>(D) the disclosure is made by or to a law enforcement agency for a law enforcement purpose in response to a warrant;</p>	<p>(e) Is made to a third party who contractually promises that the biometric identifier will not be further disclosed and will not be enrolled in a database for a commercial purpose inconsistent with the notice and consent described in this subsection (3) and subsections (1) and (2) of this section; or</p> <p>(5) A person who enrolls a biometric identifier of an individual for a commercial purpose or obtains a biometric identifier of an individual from a third party for a commercial purpose pursuant to this section may not use or disclose it in a manner that is materially inconsistent with the terms under which the biometric identifier was originally provided without obtaining consent for the new terms of use or disclosure.</p>

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<b>Retention</b>	(a) A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.	(3) shall destroy the biometric identifier within a reasonable time, but not later than the first anniversary of the date the purpose for collecting the identifier expires, except as provided by Subsection (c-1).  (c-1) If a biometric identifier of an individual captured for a commercial purpose is used in connection with an instrument or document that is required by another law to be maintained for a period longer than the period prescribed by Subsection (c)(3), the person who possesses the biometric identifier shall destroy the biometric identifier within a reasonable time, but not later than the first anniversary of the date the instrument or document is no longer required to be maintained by law.  (c-2) If a biometric identifier captured for a commercial purpose has been collected for security purposes by an employer, the purpose for collecting the identifier under Subsection (c)(3) is presumed to expire on termination of the employment relationship.	(b) May retain the biometric identifier no longer than is reasonably necessary to: (i) Comply with a court order, statute, or public records retention schedule specified under federal, state, or local law; (ii) Protect against or prevent actual or potential fraud, criminal activity, claims, security threats, or liability; and (iii) Provide the services for which the biometric identifier was enrolled. ... (6) The limitations on disclosure and retention of biometric identifiers provided in this section do not apply to disclosure or retention of biometric identifiers that have been unenrolled.

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<b>Penalties/Enforcement</b>	<p>(740 ILCS 14/20)  <b>Sec. 20. Right of action.</b>  <b>Any person</b> aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in federal district court against an offending party. A prevailing party may recover for each violation:</p> <p>(1) against a private entity that negligently violates a provision of this Act, liquidated damages of \$1,000 or actual damages, whichever is greater;</p> <p>(2) against a private entity that intentionally or recklessly violates a provision of this Act, liquidated damages of \$5,000 or actual damages, whichever is greater;</p> <p>(3) reasonable attorneys' fees and costs, including expert witness fees and other litigation expenses; and</p> <p>(4) other relief, including an injunction, as the state or federal court may deem appropriate.</p>	<p>(d) A person who violates this section is subject to a civil penalty of not more than \$25,000 for each violation. The <b>attorney general</b> may bring an action to recover the civil penalty.</p>	<p>A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.</p> <p>(2) This chapter may be enforced solely by the <b>attorney general</b> under the consumer protection act, chapter 19.86 RCW.</p>

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<b>Exclusions</b>	<p>(a) Nothing in this Act shall be construed to impact the admission or discovery of biometric identifiers and biometric information in any action of any kind in any court, or before any tribunal, board, agency, or person.</p> <p>(b) Nothing in this Act shall be construed to conflict with the X-Ray Retention Act, the federal Health Insurance Portability and Accountability Act of 1996 and the rules promulgated under either Act.</p> <p>(c) Nothing in this Act shall be deemed to apply in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder.</p> <p>(d) Nothing in this Act shall be construed to conflict with the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 and the rules promulgated thereunder.</p> <p>(e) Nothing in this Act shall be construed to apply to a contractor, subcontractor, or agent of a State agency or local unit of government when working for that State agency or local unit of government.</p>	<p>(e) This section does not apply to voiceprint data retained by a financial institution or an affiliate of a financial institution, as those terms are defined by 15 U.S.C. Section 6809.</p>	<p>(1) Nothing in this chapter applies in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley act of 1999 and the rules promulgated thereunder.</p> <p>(2) Nothing in this chapter applies to activities subject to Title V of the federal health insurance privacy and portability act of 1996 and the rules promulgated thereunder.</p> <p>(3) Nothing in this chapter expands or limits the authority of a law enforcement officer acting within the scope of his or her authority including, but not limited to, the authority of a state law enforcement officer in executing lawful searches and seizures.</p>