

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Biometric Information Privacy Act.

6 Section 5. Legislative findings; intent. The General
7 Assembly finds all of the following:

8 (a) The use of biometrics is growing in the business and
9 security screening sectors and appears to promise streamlined
10 financial transactions and security screenings.

11 (b) Major national corporations have selected the City of
12 Chicago and other locations in this State as pilot testing
13 sites for new applications of biometric-facilitated financial
14 transactions, including finger-scan technologies at grocery
15 stores, gas stations, and school cafeterias.

16 (c) Biometrics are unlike other unique identifiers that are
17 used to access finances or other sensitive information. For
18 example, social security numbers, when compromised, can be
19 changed. Biometrics, however, are biologically unique to the
20 individual; therefore, once compromised, the individual has no
21 recourse, is at heightened risk for identity theft, and is
22 likely to withdraw from biometric-facilitated transactions.

23 (d) An overwhelming majority of members of the public are

1 weary of the use of biometrics when such information is tied to
2 finances and other personal information.

3 (e) Despite limited State law regulating the collection,
4 use, safeguarding, and storage of biometrics, many members of
5 the public are deterred from partaking in biometric
6 identifier-facilitated transactions.

7 (f) The full ramifications of biometric technology are not
8 fully known.

9 (g) The public welfare, security, and safety will be served
10 by regulating the collection, use, safeguarding, handling,
11 storage, retention, and destruction of biometric identifiers
12 and information.

13 Section 10. Definitions. In this Act:

14 "Biometric identifier" means a retina or iris scan,
15 fingerprint, voiceprint, or scan of hand or face geometry.
16 Biometric identifiers do not include writing samples, written
17 signatures, photographs, human biological samples used for
18 valid scientific testing or screening, demographic data,
19 tattoo descriptions, or physical descriptions such as height,
20 weight, hair color, or eye color. Biometric identifiers do not
21 include donated organs, tissues, or parts as defined in the
22 Illinois Anatomical Gift Act or blood or serum stored on behalf
23 of recipients or potential recipients of living or cadaveric
24 transplants and obtained or stored by a federally designated
25 organ procurement agency. Biometric identifiers do not include

1 biological materials regulated under the Genetic Information
2 Privacy Act. Biometric identifiers do not include information
3 captured from a patient in a health care setting or information
4 collected, used, or stored for health care treatment, payment,
5 or operations under the federal Health Insurance Portability
6 and Accountability Act of 1996. Biometric identifiers do not
7 include an X-ray, roentgen process, computed tomography, MRI,
8 PET scan, mammography, or other image or film of the human
9 anatomy used to diagnose, prognose, or treat an illness or
10 other medical condition or to further validate scientific
11 testing or screening.

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

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

26 "Private entity" means any individual, partnership,

1 corporation, limited liability company, association, or other
2 group, however organized. A private entity does not include a
3 State or local government agency. A private entity does not
4 include any court of Illinois, a clerk of the court, or a judge
5 or justice thereof.

6 "Written release" means informed written consent or, in the
7 context of employment, a release executed by an employee as a
8 condition of employment.

9 Section 15. Retention; collection; disclosure;
10 destruction.

11 (a) A private entity in possession of biometric identifiers
12 or biometric information must develop a written policy, made
13 available to the public, establishing a retention schedule and
14 guidelines for permanently destroying biometric identifiers
15 and biometric information when the initial purpose for
16 collecting or obtaining such identifiers or information has
17 been satisfied or within 3 years of the individual's last
18 interaction with the private entity, whichever occurs first.
19 Absent a valid warrant or subpoena issued by a court of
20 competent jurisdiction, a private entity in possession of
21 biometric identifiers or biometric information must comply
22 with its established retention schedule and destruction
23 guidelines.

24 (b) No private entity may collect, capture, purchase,
25 receive through trade, or otherwise obtain a person's or a

1 customer's biometric identifier or biometric information,
2 unless it first:

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

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

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

15 (c) No private entity in possession of a biometric
16 identifier or biometric information may sell, lease, trade, or
17 otherwise profit from a person's or a customer's biometric
18 identifier or biometric information.

19 (d) No private entity in possession of a biometric
20 identifier or biometric information may disclose, redisclose,
21 or otherwise disseminate a person's or a customer's biometric
22 identifier or biometric information unless:

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

26 (2) the disclosure or redisclosure completes a

1 financial transaction requested or authorized by the
2 subject of the biometric identifier or the biometric
3 information or the subject's legally authorized
4 representative;

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

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

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

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

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

21 Section 20. Right of action. Any person aggrieved by a
22 violation of this Act shall have a right of action in a State
23 circuit court or as a supplemental claim in federal district
24 court against an offending party. A prevailing party may
25 recover for each violation:

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

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

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

9 (4) other relief, including an injunction, as the State
10 or federal court may deem appropriate.

11 Section 25. Construction.

12 (a) Nothing in this Act shall be construed to impact the
13 admission or discovery of biometric identifiers and biometric
14 information in any action of any kind in any court, or before
15 any tribunal, board, agency, or person.

16 (b) Nothing in this Act shall be construed to conflict with
17 the X-Ray Retention Act, the federal Health Insurance
18 Portability and Accountability Act of 1996 and the rules
19 promulgated under either Act.

20 (c) Nothing in this Act shall be deemed to apply in any
21 manner to a financial institution or an affiliate of a
22 financial institution that is subject to Title V of the federal
23 Gramm-Leach-Bliley Act of 1999 and the rules promulgated
24 thereunder.

25 (d) Nothing in this Act shall be construed to conflict with

1 the Private Detective, Private Alarm, Private Security,
2 Fingerprint Vendor, and Locksmith Act of 2004 and the rules
3 promulgated thereunder.

4 (e) Nothing in this Act shall be construed to apply to a
5 contractor, subcontractor, or agent of a State agency or local
6 unit of government when working for that State agency or local
7 unit of government.

8 Section 30. Biometric Information Privacy Study Committee.

9 (a) The Department of Human Services, in conjunction with
10 Central Management Services, subject to appropriation or other
11 funds made available for this purpose, shall create the
12 Biometric Information Privacy Study Committee, hereafter
13 referred to as the Committee. The Department of Human Services,
14 in conjunction with Central Management Services, shall provide
15 staff and administrative support to the Committee. The
16 Committee shall examine (i) current policies, procedures, and
17 practices used by State and local governments to protect an
18 individual against unauthorized disclosure of his or her
19 biometric identifiers and biometric information when State or
20 local government requires the individual to provide his or her
21 biometric identifiers to an officer or agency of the State or
22 local government; (ii) issues related to the collection,
23 destruction, security, and ramifications of biometric
24 identifiers, biometric information, and biometric technology;
25 and (iii) technical and procedural changes necessary in order

1 to implement and enforce reasonable, uniform biometric
2 safeguards by State and local government agencies.

3 (b) The Committee shall hold such public hearings as it
4 deems necessary and present a report of its findings and
5 recommendations to the General Assembly before January 1, 2009.
6 The Committee may begin to conduct business upon appointment of
7 a majority of its members. All appointments shall be completed
8 by 4 months prior to the release of the Committee's final
9 report. The Committee shall meet at least twice and at other
10 times at the call of the chair and may conduct meetings by
11 telecommunication, where possible, in order to minimize travel
12 expenses. The Committee shall consist of 27 members appointed
13 as follows:

14 (1) 2 members appointed by the President of the Senate;

15 (2) 2 members appointed by the Minority Leader of the
16 Senate;

17 (3) 2 members appointed by the Speaker of the House of
18 Representatives;

19 (4) 2 members appointed by the Minority Leader of the
20 House of Representatives;

21 (5) One member representing the Office of the Governor,
22 appointed by the Governor;

23 (6) One member, who shall serve as the chairperson of
24 the Committee, representing the Office of the Attorney
25 General, appointed by the Attorney General;

26 (7) One member representing the Office of the Secretary

1 of the State, appointed by the Secretary of State;

2 (8) One member from each of the following State
3 agencies appointed by their respective heads: Department
4 of Corrections, Department of Public Health, Department of
5 Human Services, Central Management Services, Illinois
6 Commerce Commission, Illinois State Police, Department of
7 Revenue;

8 (9) One member appointed by the chairperson of the
9 Committee, representing the interests of the City of
10 Chicago;

11 (10) 2 members appointed by the chairperson of the
12 Committee, representing the interests of other
13 municipalities;

14 (11) 2 members appointed by the chairperson of the
15 Committee, representing the interests of public hospitals;
16 and

17 (12) 4 public members appointed by the chairperson of
18 the Committee, representing the interests of the civil
19 liberties community, the electronic privacy community, and
20 government employees.

21 (c) This Section is repealed January 1, 2009.

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.