

116TH CONGRESS
2D SESSION

S. 4400

To regulate the collection, retention, disclosure, and destruction of biometric information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2020

Mr. MERKLEY (for himself and Mr. SANDERS) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To regulate the collection, retention, disclosure, and destruction of biometric information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Biometric
5 Information Privacy Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **BIOMETRIC IDENTIFIER.**—The term “bio-
9 metric identifier”—

10 (A) includes—

- 1 (i) a retina or iris scan;
- 2 (ii) a voiceprint;
- 3 (iii) a faceprint (including any face-
- 4 print derived from a photograph);
- 5 (iv) fingerprints or palm prints; and
- 6 (v) any other uniquely identifying in-
- 7 formation based on the characteristics of
- 8 an individual's gait or other immutable
- 9 characteristic of an individual;

10 (B) does not include writing samples, writ-

11 ten signatures, photographs, human biological

12 samples used for valid scientific testing or

13 screening, demographic data, tattoo descrip-

14 tions, or physical descriptions such as height,

15 weight, hair color, or eye color;

16 (C) does not include donated organs, tis-

17 sues, or parts or blood or serum stored on be-

18 half of recipients or potential recipients of living

19 or cadaveric transplants and obtained or stored

20 by a federally designated organ procurement

21 agency;

22 (D) does not include information captured

23 from a patient in a health care setting for a

24 medical purpose or information collected, used,

25 or stored for health care treatment, payment, or

1 operations under the Health Insurance Port-
2 ability and Accountability Act of 1996 (Public
3 Law 104–191); and

4 (E) does not include an x ray, roentgen
5 process, computed tomography, MRI, PET
6 scan, mammography, or other image or film of
7 the human anatomy used to diagnose, prognose,
8 or treat an illness or other medical condition or
9 to further validate scientific testing or screen-
10 ing.

11 (2) CONFIDENTIAL AND SENSITIVE INFORMA-
12 TION.—The term “confidential and sensitive infor-
13 mation”—

14 (A) means personal information that can
15 be used to uniquely identify an individual or an
16 individual’s account or property; and

17 (B) includes genetic markers, genetic test-
18 ing information, unique identifier numbers to
19 locate accounts or property, account numbers,
20 personal identification numbers, pass codes,
21 driver’s license numbers, or Social Security
22 numbers.

23 (3) PRIVATE ENTITY.—The term “private enti-
24 ty”—

1 (A) means any individual, partnership, cor-
 2 poration, limited liability company, association,
 3 or other group, however organized; and

4 (B) does not include any Federal, State, or
 5 local government agency or academic institu-
 6 tion.

7 (4) WRITTEN RELEASE.—The term “written re-
 8 lease” means—

9 (A) specific, discrete, freely given, unam-
 10 biguous, and informed written consent given by
 11 an individual who is not under any duress or
 12 undue influence of an entity or third party at
 13 the time such consent is given; or

14 (B) in the context of employment, a release
 15 executed by an employee as a condition of em-
 16 ployment.

17 **SEC. 3. COLLECTION, RETENTION, DISCLOSURE, AND DE-**
 18 **STRUCTION OF BIOMETRIC INFORMATION.**

19 (a) WRITTEN POLICY.—

20 (1) IN GENERAL.—Not later than 60 days after
 21 the date of the enactment of this Act, any private
 22 entity in possession of biometric identifiers or bio-
 23 metric information concerning an individual shall de-
 24 velop and make available to the public a written pol-
 25 icy establishing a retention schedule and guidelines

1 for permanently destroying such biometric identifiers
2 and biometric information not later than the earlier
3 of—

4 (A) the date on which the initial purpose
5 for collecting or obtaining such identifiers or in-
6 formation has been satisfied, if the individual
7 from whom the biometric information was col-
8 lected—

9 (i) freely consented to the original
10 purpose for such collection; and

11 (ii) could have declined such collection
12 without consequence; or

13 (B) 1 year after the individual's last inten-
14 tional interaction with the private entity.

15 (2) COMPLIANCE.—Absent a valid warrant or
16 subpoena issued by a court of competent jurisdic-
17 tion, a private entity in possession of biometric iden-
18 tifiers or biometric information shall comply with the
19 retention schedule and destruction guidelines estab-
20 lished pursuant to paragraph (1).

21 (b) LIMITATIONS.—

22 (1) IN GENERAL.—A private entity may not col-
23 lect, capture, purchase, receive through trade, or
24 otherwise obtain a person's or a customer's biomet-
25 ric identifier or biometric information unless—

1 (A) the entity requires the identifier or in-
2 formation—

3 (i) to provide a service for the person
4 or customer; or

5 (ii) for another valid business purpose
6 specified in the written policy published
7 pursuant to section 3; and

8 (B) the entity first—

9 (i) informs the person or customer, or
10 his or her legally authorized representative,
11 in writing—

12 (I) that such biometric identifier
13 or biometric information is being col-
14 lected or stored; and

15 (II) of the specific purpose and
16 length of term for which a biometric
17 identifier or biometric information is
18 being collected, stored, and used; and

19 (ii) receives a written release executed
20 by the subject of the biometric identifier or
21 biometric information or by the subject's
22 legally authorized representative.

23 (2) WRITTEN RELEASE.—A written release
24 under paragraph (1)(B)—

1 (A) may not be sought through, as a part
 2 of, or otherwise combined with any other con-
 3 sent or permission seeking instrument or func-
 4 tion;

5 (B) may not be combined with an employ-
 6 ment contract; and

7 (C) if it involves a minor, may only be ob-
 8 tained through the minor's parent or guardian.

9 (c) PROHIBITED ACTS.—A private entity in posses-
 10 sion of a biometric identifier or biometric information may
 11 not sell, lease, trade, use for advertising purposes, or oth-
 12 erwise profit from a person's or a customer's biometric
 13 identifier or biometric information.

14 (d) DISCLOSURE.—A private entity in possession of
 15 a biometric identifier or the biometric information of a
 16 person, including a consumer, job applicant, employee,
 17 former employee, or contractor, may not disclose, redis-
 18 close, sell, lease, trade, use for advertising purposes, other-
 19 wise disseminate, or profit from such biometric identifier
 20 or biometric information unless—

21 (1) the subject of the biometric identifier or bio-
 22 metric information, or the subject's legally author-
 23 ized representative, provides a written release to
 24 such specified action immediately prior to such dis-
 25 closure or redisclosure, including a description of—

1 (A) the data that will be disclosed;

2 (B) the reason for such disclosure; and

3 (C) the recipients of such data;

4 (2) the disclosure or redisclosure completes a fi-
 5 nancial transaction requested or authorized by the
 6 subject of the biometric identifier or the biometric
 7 information or the subject's legally authorized rep-
 8 resentative; or

9 (3) the disclosure or redisclosure—

10 (A) is required by Federal, State, or mu-
 11 nicipal law; or

12 (B) is required pursuant to a valid warrant
 13 or subpoena issued by a court of competent ju-
 14 risdiction.

15 (e) CONDITIONS.—A private entity in possession of
 16 a biometric identifier or biometric information shall store,
 17 transmit, and protect from disclosure all biometric identi-
 18 fiers and biometric information—

19 (1) using the reasonable standard of care within
 20 the private entity's industry; and

21 (2) in a manner that is the same as, or more
 22 protective than, the manner in which the private en-
 23 tity stores, transmits, and protects other confidential
 24 and sensitive information.

1 (f) RIGHT TO KNOW.—Any business that collects,
 2 uses, shares, or sells biometric identifiers or biometric in-
 3 formation, upon the request of an individual, shall dis-
 4 close, free of charge, any such information relating to such
 5 individual collected during the preceding 12-month period,
 6 including—

7 (1) the categories of personal information;

8 (2) specific pieces of personal information;

9 (3) the categories of sources from which the
 10 business collected personal information;

11 (4) the purposes for which the business uses the
 12 personal information;

13 (5) the categories of third parties with whom
 14 the business shares the personal information; and

15 (6) the categories of information that the busi-
 16 ness sells or discloses to third parties.

17 **SEC. 4. CAUSE OF ACTION.**

18 (a) IN GENERAL.—Any individual aggrieved by a vio-
 19 lation of section 3 may bring a civil action in a court of
 20 competent jurisdiction against a private entity that alleg-
 21 edly committed such violation. Any such violation con-
 22 stitutes an injury-in-fact and a harm to any affected indi-
 23 vidual.

24 (b) ADMISSIBILITY.—Except in a judicial investiga-
 25 tion or proceeding alleging a violation of section 3, infor-

1 mation obtained in violation of section 3 is not admissible
 2 by the Federal Government in any criminal, civil, adminis-
 3 trative, or other investigation or proceeding.

4 (c) RIGHT TO SUE.—An individual described in sub-
 5 section (a) may institute legal proceedings against a pri-
 6 vate entity alleged to have violated section 3 for the relief
 7 described in subsection (e) in any court of competent juris-
 8 diction.

9 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
 10 ERAL.—The chief law enforcement officer of a State, or
 11 any other State officer authorized by law to bring actions
 12 on behalf of the residents of a State, may bring a civil
 13 action, as *parens patriae*, on behalf of the residents of
 14 such State in an appropriate district court of the United
 15 States to enforce this Act if the chief law enforcement offi-
 16 cer or other State officer has reason to believe that the
 17 interests of the residents of the State have been or are
 18 being threatened or adversely affected by a violation of
 19 section 3.

20 (e) FORMS OF RELIEF.—

21 (1) IN GENERAL.—A plaintiff bringing a civil
 22 action under this section may recover—

23 (A)(i) for the negligent violations of any
 24 provision of section 3, the greater of—

1 (I) \$1,000 in liquidated damages per
 2 violation; or

3 (II) the actual damages suffered by
 4 the plaintiff; or

5 (ii) for the intentional or reckless violation
 6 of any provision of section 3, the sum of—

7 (I) the actual damages suffered by the
 8 plaintiff; and

9 (II) any punitive damages awarded by
 10 the court, which shall be limited to \$5,000
 11 per violation;

12 (B) reasonable attorneys' fees and costs,
 13 including expert witness fees and other litiga-
 14 tion expenses; and

15 (C) other relief, including an injunction, as
 16 the court may deem appropriate.

17 (2) SPECIFIC PERFORMANCE.—A court may re-
 18 quire a private entity to permanently destroy the bi-
 19 ometric identifiers, biometric information, or con-
 20 fidential and sensitive information of a plaintiff
 21 under this section.

22 **SEC. 5. RULES OF CONSTRUCTION.**

23 Nothing in this Act may be construed—

24 (1) to impact the admission or discovery of bio-
 25 metric identifiers and biometric information in any

1 action of any kind in any court, or before any tri-
2 bunal, board, agency, or person;

3 (2) to conflict with the Health Insurance Port-
4 ability and Accountability Act of 1996 (Public Law
5 104–191);

6 (3) to conflict with title V of the Federal
7 Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.);

8 (4) to apply to a contractor, subcontractor, or
9 agent of a Federal, State, or local government agen-
10 cy in the course of employment with such agency; or

11 (5) to preempt or supersede any Federal, State,
12 or local law that imposes a more stringent limitation
13 than the limitations described in section 3.

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