

By: Cain

H.B. No. 4705

A BILL TO BE ENTITLED

AN ACT

relating to collection and use of biometric identifiers and biometric information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE. This Act may be cited as the Biometric Data Privacy Act of 2023.

SECTION 2. FINDINGS. The legislature finds that:

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

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

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

(4) An overwhelming majority of members of the public are weary of the use of biometrics when such information is tied to

1 finances and other personal information.

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

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

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

12 SECTION 3. Chapter 503, Business and Commerce Code, is  
13 amended by adding Section 503.0001 to read as follows:

14 Sec. 503.0001. DEFINITIONS. In this chapter: (1)  
15 "Biometric identifier" means a retina or iris scan, palm or  
16 vascular vein, heartbeat, fingerprint, voiceprint, key strokes,  
17 signature, gait, or record or scan of hand or face geometry.  
18 Biometric identifier does not include a digital or physical  
19 photograph, an audio or video recording, or any data generated from  
20 a digital or physical photograph, or an audio or video recording,  
21 unless the photograph, recording, or data is generated to identify  
22 a specific individual.

23 (2) "Biometric information" means any information,  
24 regardless of how it is captured, converted, stored, or shared,  
25 based on an individual's biometric identifier used to identify an  
26 individual. Biometric information does not include information  
27 derived from items or procedures excluded under the definition of

1 biometric identifiers.

2 (3) "Person" means any individual, partnership,  
3 association, corporation, or other private legal entity.

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

7 SECTION 4. Section 503.001, Business and Commerce Code, is  
8 amended to read as follows:

9 Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER OR  
10 BIOMETRIC INFORMATION. (a) ~~[In this section, "biometric~~  
11 ~~identifier" means a retina or iris scan, fingerprint, voiceprint,~~  
12 ~~or record of hand or face geometry.]~~

13 ~~[(b)]~~ A person may not capture a biometric identifier or  
14 biometric information of an individual for a commercial purpose  
15 unless the person first:

16 (1) informs the individual or the individual's legally  
17 authorized representative in writing that a ~~[before capturing the]~~  
18 biometric identifier or biometric information is being collected or  
19 stored; and ~~[and]~~

20 (2) informs the individual or the individual's legally  
21 authorized representative in writing of the specific purpose and  
22 the length of term for which a biometric identifier or biometric  
23 information is being collected, stored, and used; and

24 (3) receives a written release executed by the  
25 individual['s] or the individual's legally authorized  
26 representative ~~[consent to capture the biometric identifier].~~

27 (b) [(c)] A person who possesses a biometric identifier or

1 biometric information of an individual that is captured for a  
2 commercial purpose:

3 (1) may not sell, lease, trade, disclose, redisclose,  
4 or otherwise disseminate an individual's [~~disclose the~~] biometric  
5 identifier or biometric information to another person unless:

6 (A) the individual or the individual's legally  
7 authorized representative consents to the disclosure for  
8 identification purposes in the event of the individual's  
9 disappearance or death;

10 (B) the disclosure or redisclosure completes a  
11 financial transaction tihat the individual or the individual's  
12 legally authorized representative requested or authorized;

13 (C) the disclosure is required or permitted by a  
14 federal statute or by a state statute other than Chapter 552,  
15 Government Code; or

16 (D) the disclosure is made by or to a law  
17 enforcement agency for a law enforcement purpose in response to a  
18 warrant or subpoena issued by a court of competent jurisdiction;

19 (2) shall store, transmit, and protect from disclosure  
20 all [~~the~~] biometric identifiers or biometric information using  
21 reasonable care and in a manner that is the same as or more  
22 protective than the manner in which the person stores, transmits,  
23 and protects any other confidential information the person  
24 possesses; and

25 (3) shall permanently destroy the biometric  
26 identifiers and biometric information within a reasonable time, but  
27 not later than the first anniversary of the date the purpose for

collecting or obtaining the identifiers or information expires, except as provided by Subsection (c) [~~(c-1)~~].

(c) [~~(c-1)~~] If a biometric identifier or biometric information of an individual captured or collected 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 (b)(3) [~~(c)(3)~~], the person who possesses the biometric identifier or biometric information shall permanently destroy the biometric identifier or biometric information 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-1) [~~(c-2)~~] If a biometric identifier or biometric information captured for a commercial purpose has been collected for security purposes by an employer, the purpose for collecting the identifier or information under Subsection (b)(3) [~~(c)(3)~~] is presumed to expire on termination of the employment relationship.

(d) A person who violates this section is subject to a civil penalty of not more than \$25,000 for each violation. The attorney general, or an individual affected by a violation of this section, may bring an action to recover the civil penalty.

(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.

SECTION 5. The change in law made by this Act to Section [503.001](#), Business & Commerce Code, applies only to a violation that occurs on or after the effective date of this Act. A violation that

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1 occurs before the effective date of this Act is governed by the law  
2 in effect on the date the violation occurred, and the former law is  
3 continued in effect for that purpose.

4       SECTION 6. This Act takes effect on September 1, 2023.