

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4106

BY DELEGATES ROWE, ESTEP-BURTON, HANSEN,

ROBINSON, FLEISCHAUER AND WALKER

[Introduced January 13, 2020; Referred to the Committee
on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §15-15-1, §15-15-2, §15-15-3, §15-15-4, and §15-15-5 all relating to creating
 3 the biometric information privacy act; providing legislative findings and definitions;
 4 regulating the retention, collection, disclosure, and destruction of biometric identifiers or
 5 biometric information; providing a right of action for grievances; and construction of this
 6 article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. BIOMETRIC INFORMATION PRIVACY ACT.

§15-15-1. Legislative findings.

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

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

8 (c) An overwhelming majority of members of the public are weary of the use of biometrics
 9 when such information is tied to finances and other personal information.

10 (d) Despite limited state law regulating the collection, use, safeguarding, and storage of
 11 biometrics, many members of the public are deterred from partaking in biometric identifier-
 12 facilitated transactions.

13 (e) The full ramifications of biometric technology are not fully known.

14 (f) The public welfare, security, and safety will be served by regulating the collection, use,
 15 safeguarding, handling, storage, retention, and destruction of biometric identifiers and
 16 information.

§15-15-2. Definitions.

1 (a) “Biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or scan of hand
2 or face geometry. Biometric identifiers do not include writing samples, written signatures,
3 photographs, human biological samples used for valid scientific testing or screening, demographic
4 data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color.
5 Biometric identifiers do not include donated organs, tissues, or parts as defined in the West
6 Virginia Anatomical Gift Act in §16-19-1 et seq. of this code or blood or serum stored on behalf of
7 recipients or potential recipients of living or cadaveric transplants and obtained or stored by a
8 federally designated organ procurement agency. Biometric identifiers do not include information
9 captured from a patient in a health care setting or information collected, used, or stored for health
10 care treatment, payment, or operations under the federal Health Insurance Portability and
11 Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process,
12 computed tomography, MRI, PET scan, mammography, or other image or film of the human
13 anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further
14 validate scientific testing or screening.

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

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

24 (d) “Private entity” means any individual, partnership, corporation, limited liability
25 company, association, or other group, however organized. A private entity does not include a
26 State or local government agency. A private entity does not include any court of Illinois, a clerk of

27 the court, or a judge or justice thereof.

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

§15-15-3. Retention; collection; disclosure; destruction.

1 (a) A private entity in possession of biometric identifiers or biometric information must
2 develop a written policy, made available to the public, establishing a retention schedule and
3 guidelines for permanently destroying biometric identifiers and biometric information when the
4 initial purpose for collecting or obtaining such identifiers or information has been satisfied or within
5 three years of the individual's last interaction with the private entity, whichever occurs first. Absent
6 a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in
7 possession of biometric identifiers or biometric information must comply with its established
8 retention schedule and destruction guidelines.

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

11 (1) Informs the subject or the subject's legally authorized representative in writing that a
12 biometric identifier or biometric information is being collected or stored;

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

16 (3) Receives a written release executed by the subject of the biometric identifier or
17 biometric information or the subject's legally authorized representative.

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

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

23 biometric information unless:

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

26 (2) The disclosure or redisclosure completes a financial transaction requested or
27 authorized by the subject of the biometric identifier or the biometric information or the subject's
28 legally authorized representative;

29 (3) The disclosure or redisclosure is required by state or federal law or municipal
30 ordinance; or

31 (4) The disclosure is required pursuant to a valid warrant or subpoena issued by a court
32 of competent jurisdiction.

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

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

36 (2) Store, transmit, and protect from disclosure all biometric identifiers and biometric
37 information in a manner that is the same as or more protective than the way the private entity
38 stores, transmits, and protects other confidential and sensitive information.

§15-15-4. Right of action.

1 Any person aggrieved by a violation of this article has a right of action in circuit court or as
2 a supplemental claim in federal district court against an offending party. A prevailing party may
3 recover for each violation:

4 (1) Against a private entity that negligently violates a provision of this article, liquidated
5 damages of \$1,000 or actual damages, whichever is greater;

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

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

10 (4) Other relief, including an injunction, as the state or federal court may consider
11 appropriate.

§15-15-5. Construction.

1 (a) Nothing in this article may be construed to impact the admission or discovery of
2 biometric identifiers and biometric information in any action of any kind in any court, or before any
3 tribunal, board, agency, or person.

4 (b) Nothing in this article may be construed to conflict with the federal Health Insurance
5 Portability and Accountability Act of 1996 and the rules promulgated under that act.

6 (c) Nothing in this article may be considered to apply in any manner to a financial institution
7 or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley
8 Act of 1999 and the rules promulgated thereunder.

9 (d) Nothing in this article may be construed to apply to a contractor, subcontractor, or
10 agent of a state agency or local unit of government when working for that state agency or local
11 unit of government.

NOTE: The purpose of this bill is to create the biometric information privacy act. The bill regulates the retention, collection, disclosure, and destruction of biometric identifiers or biometric information.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.