

# HOUSE BILL No. 5019

September 27, 2017, Introduced by Rep. Lucido and referred to the Committee on Commerce and Trade.

A bill to regulate the acquisition, possession, and protection of biometric identifiers and biometric information by private entities; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "biometric information privacy act".

3           Sec. 3. As used in this act:

4           (a) "Biometric identifier" means a retina or iris scan,  
5 fingerprint, voiceprint, or scan of hand or face geometry. The term  
6 does not include any of the following:

7           (i) A writing sample, written signature, photograph, human  
8 biological sample used for valid scientific testing or screening,  
9 tattoo description, or a physical description such as height,

1 weight, hair color, or eye color or demographic data.

2 (ii) A body part as defined in the revised uniform anatomical  
3 gift law, sections 10101 to 10123 of the public health code, 1978  
4 PA 368, MCL 333.10101 to 333.10123, or blood or serum stored on  
5 behalf of recipients or potential recipients of living or cadaveric  
6 transplants and obtained or stored by a federally designated organ  
7 procurement agency.

8 (iii) Information captured from a patient in a health care  
9 setting or information collected, used, or stored for health care  
10 treatment, payment, or operations under the health insurance  
11 portability and accountability act of 1996, Public Law 104-191.

12 (iv) An X-ray, roentgen process, computed tomography, MRI, PET  
13 scan, mammography, or other image or film of the human anatomy used  
14 to diagnose, prognose, or treat an illness or other medical  
15 condition or to further validate scientific testing or screening.

16 (b) "Biometric information" means any information, regardless  
17 of how it is captured, converted, stored, or shared, based on an  
18 individual's biometric identifier used to identify an individual.  
19 Biometric information does not include information derived from an  
20 item or procedure that is excluded from the definition of biometric  
21 identifier in subdivision (a) (i) to (iv).

22 (c) "Confidential and sensitive information" means personal  
23 information that can be used to uniquely identify an individual or  
24 an individual's account or property. Examples of confidential and  
25 sensitive information include, but are not limited to, a genetic  
26 marker, genetic testing information, a unique identifier number to  
27 locate an account or property, an account number, a PIN number, a

1 pass code, a driver license number, or a Social Security number.

2 (d) "Private entity" means any individual, partnership,  
3 corporation, limited liability company, association, or other legal  
4 entity. Private entity does not include a state or local government  
5 agency, any court of this state, or a clerk, judge, or justice of a  
6 court of this state.

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

10 Sec. 5. (1) A private entity in possession of biometric  
11 identifiers or biometric information must develop a written policy  
12 that establishes a retention schedule and guidelines for  
13 permanently destroying biometric identifiers and biometric  
14 information when the initial purpose for collecting or obtaining  
15 the identifiers or information is satisfied, or within 3 years of  
16 the individual's last interaction with the private entity,  
17 whichever occurs first. Unless it has received a valid warrant or  
18 subpoena issued by a court of competent jurisdiction, a private  
19 entity in possession of biometric identifiers or biometric  
20 information must comply with its established retention schedule and  
21 destruction guidelines.

22 (2) A private entity shall make its written policy under  
23 subsection (1) available to the public.

24 (3) A private entity shall not collect, capture, purchase,  
25 receive through trade, or otherwise obtain a biometric identifier  
26 or biometric information of a customer or other individual, unless  
27 it first does all of the following:

1 (a) Informs the individual or his or her legally authorized  
2 representative in writing that a biometric identifier or biometric  
3 information is being collected or stored.

4 (b) Informs the individual or his or her legally authorized  
5 representative in writing of the specific purpose and length of  
6 term for which a biometric identifier or biometric information is  
7 being collected, stored, and used.

8 (c) Receives a written release executed by the individual or  
9 his or her legally authorized representative.

10 (4) A private entity in possession of a biometric identifier  
11 or biometric information shall not sell, lease, trade, or otherwise  
12 profit from a biometric identifier or biometric information of a  
13 customer or other individual.

14 (5) A private entity in possession of a biometric identifier  
15 or biometric information of an individual shall not disclose,  
16 redisclose, or otherwise disseminate that biometric identifier or  
17 biometric information unless 1 of the following applies:

18 (a) The individual or his or her legally authorized  
19 representative consents to the dissemination of the identifier or  
20 information.

21 (b) The dissemination of the identifier or information  
22 completes a financial transaction that is requested or authorized  
23 by the individual or his or her legally authorized representative.

24 (c) The dissemination of the identifier or information is  
25 required under state or federal law or municipal ordinance.

26 (d) The dissemination of the identifier or information is  
27 required pursuant to a valid warrant or subpoena issued by a court

1 of competent jurisdiction.

2 (6) A private entity that is in possession of a biometric  
3 identifier or biometric information shall do all of the following:

4 (a) Store, transmit, and protect from disclosure all biometric  
5 identifiers and biometric information using the reasonable standard  
6 of care within the private entity's industry.

7 (b) Store, transmit, and protect from disclosure all biometric  
8 identifiers and biometric information in a manner that is the same  
9 as or more protective than the manner in which the private entity  
10 stores, transmits, and protects other confidential and sensitive  
11 information.

12 Sec. 7. A person that is aggrieved by a violation of this act  
13 by a private entity or another person has a cause of action in a  
14 circuit court or as a supplemental claim in federal district court  
15 against that person. The court may award 1 or more of the following  
16 remedies to a plaintiff that prevails in an action brought under  
17 this section:

18 (a) Against a private entity that negligently violates a  
19 provision of this act, liquidated damages of \$1,000.00, or actual  
20 damages, whichever is greater.

21 (b) Against a private entity that intentionally or recklessly  
22 violates a provision of this act, liquidated damages of \$5,000.00,  
23 or actual damages, whichever is greater.

24 (c) Reasonable attorney fees and costs, including expert  
25 witness fees and other litigation expenses.

26 (d) An injunction or other relief, as the court determines  
27 appropriate.

1           Sec. 9. (1) This act shall not be construed to impact the  
2 admission or discovery of biometric identifiers and biometric  
3 information in any action of any kind in any court, or before any  
4 tribunal, board, agency, or person.

5           (2) This act shall not be construed to conflict with the  
6 health insurance portability and accountability act of 1996, Public  
7 Law 104-191, or the regulations promulgated under that act.

8           (3) This act shall not be considered to apply in any manner to  
9 a financial institution or an affiliate of a financial institution  
10 that is subject to subtitle A of title V of the Gramm-Leach-Bliley  
11 act, 15 USC 6801 to 6809, or the regulations promulgated under that  
12 act.

13           (4) This act shall not be construed to apply to a contractor,  
14 subcontractor, or agent of a state agency or local unit of  
15 government when working for that state agency or local unit of  
16 government.

17           Enacting section 1. This act takes effect 90 days after the  
18 date it is enacted into law.