

HOUSE BILL NO. 518

INTRODUCED BY N. MCCONNELL

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA BIOMETRIC INFORMATION PRIVACY ACT; PROHIBITING A PRIVATE ENTITY FROM COLLECTING, STORING, AND USING A PERSON'S BIOMETRIC DATA WITHOUT A PERSON'S CONSENT; ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE SALE, DISCLOSURE, PROTECTION, AND DISPOSAL OF BIOMETRIC INFORMATION; PROVIDING EXEMPTIONS; PROVIDING DEFINITIONS; CREATING A PRIVATE RIGHT OF ACTION AND ESTABLISHING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Biometric Information Privacy Act".

NEW SECTION. **Section 2. Definitions.** For purposes of [sections 1 through 7], the following definitions apply:

(1) (a) "Biometric data" means a biologic or behavioral characteristic that uniquely identifies and enables automated recognition of an individual, including but not limited to retina or iris scan, finger or palm print, voice recognition, hand or face geometry, facial imaging, facial recognition, gait recognition, vein recognition, or other biologic or behavioral identifiers.

(b) The term does not include the following:

(i) written signature, demographic data, physical description, writing sample, tattoo description, or human biological sample used for valid scientific screening or testing;

(ii) donated organ, tissue, blood, serum, or plasma stored on behalf of a potential recipient;

(iii) information captured from a patient in a health care setting or information collected and used for health care treatment, including an x-ray, MRI, PET scan, mammography, or other image of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening; or

(iv) a photograph or video, unless the photograph or video is collected, shared, or stored for use as a

1 source of biometric data or for use as biometric information. A photograph or video that is used to aid a person
2 who is blind or otherwise visually impaired is not biometric data for purposes of this subsection.

3 (2) "Biometric information" means any information based on a person's biometric data that is collected,
4 stored, or used to identify an individual.

5 (3) (a) "Private entity" means any individual, partnership, corporation, limited liability company,
6 association, or other group however organized.

7 (b) The term does not include a state or local governmental agency or a court, clerk of court, or a judge
8 of a court in this state.

9 (4) "Writing" means a written or electronic communication that can be documented and is written in plain,
10 easily understood language.

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12 **NEW SECTION. Section 3. Collection of biometric data -- notification and consent.** (1) A private
13 entity may not collect, capture, purchase, receive through trade, or otherwise obtain for use a person's biometric
14 data or biometric information unless the private entity first:

15 (a) notifies the person in writing:

16 (i) that the person's biometric data is being collected;

17 (ii) of the specific type of biometric data that is being collected;

18 (iii) of the specific purpose for which the biometric data will be used; and

19 (iv) of the length of time the biometric data will be collected, stored, and used; and

20 (b) receives full consent of the person in writing to:

21 (i) the collection and storage of the biometric data;

22 (ii) the specific purpose for which the biometric data will be used; and

23 (iii) the length of time the biometric data will be stored.

24 (2) A private entity in possession of biometric data or biometric information must have a written policy,
25 made available to the public, establishing a reasonable process for a person to revoke the person's consent.

26 (3) If biometric data is collected and stored for security purposes by a person's employer, the purpose
27 for the collection is presumed to expire upon the termination of the person's employment.

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29 **NEW SECTION. Section 4. Sale and disclosure of biometric information.** (1) (a) A private entity that
30 possesses a person's biometric data or biometric information may not sell, lease, trade, or otherwise profit from

1 the person's biometric information.

2 (b) This subsection does not prohibit a private entity from transferring a person's biometric data or
3 biometric information through a sale of the private entity to another party.

4 (2) A private entity that possesses a person's biometric data or biometric information may not disclose,
5 transfer, or distribute a person's biometric data or biometric information unless:

6 (a) the person consents in writing to the disclosure;

7 (b) the disclosure completes a financial transaction requested or authorized by the person;

8 (c) the disclosure is required by state or federal law; or

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

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12 **NEW SECTION. Section 5. Protection and disposal of biometric information.** (1) A private entity
13 in possession of a person's biometric data or biometric information shall store, transmit, and protect from
14 disclosure the biometric data or biometric information using the reasonable standard of care within the private
15 entity's industry and in a manner that is the same as or more protective than the manner in which the private
16 entity stores, transmits, and protects other confidential, sensitive, and personally identifying information.

17 (2) Unless prohibited by other law or court order, a private entity in possession of a person's biometric
18 data or biometric information must permanently delete, destroy, or remove the person's biometric information
19 when the initial purpose for collecting or obtaining the information is satisfied or fulfilled or the term or duration
20 for the collection and storage of the biometric information has ended.

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22 **NEW SECTION. Section 6. Exemptions.** [Sections 1 through 7] do not apply to the collection, retention,
23 analysis, disclosure, or distribution of biometric data or biometric information:

24 (1) for law enforcement purposes conducted by government agencies, including for the identification of
25 perpetrators, missing persons, trafficking victims, or human remains;

26 (2) for facial images used by the department of justice to create driver's licenses or other state
27 identification cards;

28 (3) pursuant to or authorized by state or federal law; or

29 (4) the retention of voices for quality assurance purposes.

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