

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 954

Introduced by Kauth, 31; Clements, 2; Hardin, 48; Lippincott, 34.

Read first time January 04, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to biometric data; to adopt the Biometric
- 2 Autonomy Liberty Law; and to provide an operative date.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 16 of this act shall be known and may be
2 cited as the Biometric Autonomy Liberty Law.

3 Sec. 2. The Legislature finds that:

4 (1) The use of biometric data is growing in commercial, therapeutic,
5 and recreational applications;

6 (2) The use of biometric data to identify or monitor individuals is
7 unlike other unique identifiers that are used in commercial and
8 recreational applications. Biometric data of an individual that has been
9 compromised leaves the individual with no recourse, a heightened risk for
10 identity theft, and a greater likelihood to withdraw from transactions
11 facilitated by biometric data;

12 (3) An overwhelming majority of members of the public are weary of
13 the use of biometric data when such data is tied to finances and other
14 personal information;

15 (4) The ramifications of biometric data technology are not fully
16 known; and

17 (5) The public's welfare, security, and safety will be served by
18 regulating the collection, use, safeguarding, handling, storage,
19 retention, and destruction of biometric data.

20 Sec. 3. For purposes of the Biometric Autonomy Liberty Law:

21 (1)(a) Biometric data means any:

22 (i) Retina or iris scan, fingerprint, voice print, scan of hand or
23 face geometry, deoxyribonucleic acid biometrics, brain wave biometrics,
24 heart biometrics, pulmonary biometrics, reproductive biometrics, or other
25 biometrics; and

26 (ii) Information based on any item described in subdivision (1)(a)
27 (i) of this section, regardless of how the information is captured,
28 converted, stored, or shared.

29 (b) Biometric data does not include:

30 (i) Any writing sample, written signature, photograph, human
31 biological sample used for valid scientific testing or screening,

1 demographic data, tattoo description, or physical description such as
2 height, weight, hair color, or eye color; and

3 (ii) Any biometrics or information regarding any (A) anatomical
4 gift, part, or tissue as such terms are defined in the Revised Uniform
5 Anatomical Gift Act or (B) blood or serum stored on behalf of any
6 recipient or potential recipient of a living or cadaveric transplant and
7 obtained or stored by a federally designated organ procurement agency;

8 (2) Collect means to gather, acquire, or obtain;

9 (3) Confidential and sensitive data means personal data that can be
10 used to uniquely identify an individual or an individual's account or
11 property, including any biometric data, genetic marker, genetic testing
12 data, unique identifier number used to locate any account or property,
13 account number, personal identification number, pass code, motor vehicle
14 operator's license number, state identification card number, or social
15 security number;

16 (4) Disclose includes redisclosure and dissemination;

17 (5) Entity means any:

18 (a) Public or private individual, partnership, corporation, limited
19 liability company, association, or other group, however organized;

20 (b) State or local government agency; and

21 (c) Court of Nebraska or any judge, justice, or employee of such
22 court;

23 (6) Portable means the ability of an individual to transfer
24 biometric data in a usable form from one entity to another entity;

25 (7) Possess means to have any custody of, to have any control of, to
26 manage the storage of, or to use;

27 (8) Secure means to make certain that biometric data is:

28 (a) Protected from the danger of loss;

29 (b) Protected from corruption of the data; and

30 (c) Safe from disclosure to any party not authorized to collect or
31 possess the data; and

1 (9) Written consent means informed written consent that is provided
2 by an individual who is nineteen years of age or older and the language
3 used in the written consent is clear, concise, and written at the
4 seventh-grade lexile.

5 Sec. 4. Biometric data is the property of the individual from whom
6 the data was collected. An individual may sell the right to use his or
7 her biometric data.

8 Sec. 5. (1) Except as provided in section 16 of this act, any
9 entity that collects or possesses biometric data shall do so in a manner
10 that is secure and portable.

11 (2) Except as provided in section 16 of this act, an individual may
12 provide a written request to an entity in possession of such individual's
13 biometric data to transfer such biometric data to another entity. An
14 entity shall transfer such biometric data as requested within five
15 calendar days after receiving such written request.

16 Sec. 6. Except as provided in section 16 of this act, no individual
17 shall be required or coerced to wear or be subject to a device of any
18 kind that collects biometric data.

19 Sec. 7. Except as provided in section 16 of this act, no individual
20 shall be required to provide or submit to the collection of biometric
21 data.

22 Sec. 8. (1) Except as provided in section 16 of this act, an entity
23 that is or intends to be in possession of an individual's biometric data
24 shall develop and make available to the public a written policy
25 establishing a retention schedule and guidelines for permanently
26 destroying biometric data at the earliest occurrence of the following:

27 (a) The initial purpose for collecting or possessing such data has
28 been satisfied;

29 (b) Within three months after the last interaction between the
30 entity and the individual from whom the data was collected; or

31 (c) The expiration of the written consent from the individual from

1 whom the data was collected.

2 (2) Except if necessary to comply with a warrant or subpoena issued
3 by a court of competent jurisdiction, an entity in possession of
4 biometric data shall comply with the entity's established retention
5 schedule and destruction guidelines.

6 Sec. 9. Except as provided in section 16 of this act, prior to
7 collecting or possessing an individual's biometric data, an entity shall:

8 (1) Inform such individual or such individual's legally authorized
9 representative in writing (a) that biometric data will be collected or
10 possessed and (b) of the specific purpose and duration for which
11 biometric data will be collected or possessed; and

12 (2) Receive written consent from such individual or such
13 individual's legally authorized representative to collect or possess
14 biometric data from the individual.

15 Sec. 10. An entity in possession of biometric data shall not sell,
16 lease, trade, or directly profit from biometric data.

17 Sec. 11. An entity in possession of biometric data shall not
18 disclose an individual's biometric data unless:

19 (1) Such individual or such individual's legally authorized
20 representative provides written consent to the disclosure;

21 (2) The disclosure is required by law;

22 (3) The disclosure is required pursuant to a warrant or subpoena
23 issued by a court of competent jurisdiction;

24 (4) The disclosure is made pursuant to a criminal action or
25 proceeding; or

26 (5) The disclosure is made pursuant to a civil action or proceeding
27 under section 13 of this act.

28 Sec. 12. An entity in possession of biometric data shall store,
29 transmit, and protect from disclosure all biometric data:

30 (1) Using the reasonable standard of care within the entity's
31 industry or profession; and

1 (2) In a manner that is the same as or more protective than the
2 manner in which the entity stores, transmits, and protects other
3 confidential and sensitive data.

4 Sec. 13. (1) The Attorney General may:

5 (a) Issue subpoenas and seek and recover direct economic damages for
6 each affected Nebraska resident injured by a violation of the Biometric
7 Autonomy Liberty Law; and

8 (b) Seek injunctive relief for a violation of the Biometric Autonomy
9 Liberty Law.

10 (2) A violation of the Biometric Autonomy Liberty Law shall be
11 considered a violation of section 59-1602 and be subject to the Consumer
12 Protection Act and any other law that provides for the implementation and
13 enforcement of section 59-1602.

14 Sec. 14. A waiver of any provision of the Biometric Autonomy
15 Liberty Law is contrary to public policy and is void and unenforceable.

16 Sec. 15. Nothing in the Biometric Autonomy Liberty Law shall be
17 construed to:

18 (1) Impact the admission or discovery of biometric data in any legal
19 action of any kind in any court or before any entity; or

20 (2) Conflict with the federal Health Insurance Portability and
21 Accountability Act of 1996 and the rules promulgated under such act.

22 Sec. 16. Sections 5 to 9 of this act shall not apply to a law
23 enforcement agency, a law enforcement officer, or a prosecutor acting
24 within the scope of authority of the agency, officer, or prosecutor.

25 Sec. 17. This act becomes operative on January 1, 2025.