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**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1450, L.D. 1945, “An Act To Regulate the Use of Biometric Identifiers”

Amend the bill by striking out everything after the enacting clause and inserting the following:

**'PART A**

**Sec. A-1. 10 MRSA c. 1057** is enacted to read:

**CHAPTER 1057**

**PRIVACY OF BIOMETRIC IDENTIFIERS**

**§9601. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Affirmative written consent.** "Affirmative written consent" means:
  - A. A specific, unambiguous and informed written consent given by an individual who is not under duress or undue influence at the time the consent is given; or
  - B. In the context of employment, a release signed by an employee as a condition of employment.
- 2. Biometric identifier.** "Biometric identifier" means information generated by measurements of an individual's unique biological characteristics, including a voiceprint or imagery of the iris, retina, fingerprint, face or hand, that can be used to identify that individual. "Biometric identifier" does not include:
  - A. A writing sample or written signature;
  - B. A photograph or video, except for measurable biological characteristics that can be generated or captured from a photograph or video;

**COMMITTEE AMENDMENT**

- 1           C. A biological sample used for valid scientific testing or screening;  
2           D. Demographic information;  
3           E. A tattoo description or a physical description, such as height, weight, hair color or  
4           eye color;  
5           F. A donated organ, tissue or other body part, blood or serum stored on behalf of a  
6           recipient or potential recipient of a living or cadaveric transplant and obtained or stored  
7           by a federally designated organ procurement organization;  
8           G. Health care information, as defined in Title 22, section 1711-C, subsection 1,  
9           paragraph E, obtained for health care, as defined in Title 22, section 1711-C, subsection  
10           1, paragraph C;  
11           H. An x-ray, computed tomography, magnetic resonance imaging, positron emission  
12           tomography, mammography or other image or film of the human anatomy used to  
13           diagnose or treat an illness or other medical condition or to further validate scientific  
14           testing or screening; or  
15           I. Information collected, used or disclosed for human subject research.

16           **3. Human subject research.** "Human subject research" means a systematic  
17           investigation, including research development, testing and evaluation, designed to develop  
18           or contribute to generalized knowledge and that is conducted in accordance with the federal  
19           policy for the protection of human subjects, 45 Code of Federal Regulations, Part 46,  
20           protection of human subjects under 21 Code of Federal Regulations, Parts 50 and 56 or  
21           security and privacy under 45 Code of Federal Regulations, Part 164, or other similar  
22           research ethics laws, or with the good clinical practice guidelines issued by the International  
23           Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human  
24           Use.

25           **4. Personal information.** "Personal information" means information that identifies,  
26           relates to, describes, is reasonably capable of being associated with or could reasonably be  
27           linked, directly or indirectly, with a particular individual, household or electronic device.

28           **5. Private entity.** "Private entity" means an individual, partnership, corporation,  
29           limited liability company, association or other group, however organized. "Private entity"  
30           does not include:

- 31           A. A state or local government agency;  
32           B. A state court judge, justice or clerk of the court; or  
33           C. An entity acting as a processor for another entity.

34           **6. Processor.** "Processor" means a private entity that collects, processes, stores or  
35           otherwise uses biometric identifiers on behalf of another private entity.

36           **§9602. Applicability**

37           This chapter does not apply to:

- 38           **1. Admission or discovery of biometric identifier.** The admission or discovery of a  
39           biometric identifier in any action of any kind in any court or before any government  
40           tribunal, board or agency;

1           **2. Personal health information subject to HIPAA.** Personal health information  
2 subject to the federal Health Insurance Portability and Accountability Act of 1996, Public  
3 Law 104-191, and applicable regulations;

4           **3. Government contractor, subcontractor or agent.** A contractor, subcontractor or  
5 agent of a state agency or local unit of government when working for that state agency or  
6 local unit of government; or

7           **4. Personal information pursuant to Gramm-Leach-Bliley Act.** Personal  
8 information collected, processed, sold or disclosed pursuant to the federal Gramm-Leach-  
9 Bliley Act, Public Law 106-102, and implementing regulations.

10           **§9603. Biometric identifier policy requirements**

11           **1. Development of policy.** Except as provided by subsection 3, a private entity in  
12 possession of biometric identifiers shall develop and make available to the public a written  
13 policy that establishes a retention schedule and guidelines for permanently destroying a  
14 biometric identifier of an individual on the earliest of:

15           A. The date on which the initial purpose for obtaining the biometric identifier has been  
16 satisfied;

17           B. One year after the individual's last intentional interaction with the private entity in  
18 possession of the biometric identifier; and

19           C. Thirty days after receiving a verified request to destroy the biometric identifier  
20 submitted by the individual.

21           **2. Adherence to policy.** A private entity shall comply with the policy developed by  
22 the private entity under subsection 1, except for an action taken in response to a state or  
23 federal law, municipal ordinance or compulsory request or demand issued in an  
24 investigation conducted pursuant to state or federal law or taken to comply with a valid  
25 warrant, subpoena or other order issued by a court of competent jurisdiction.

26           **3. Exception.** A private entity is not required to make available to the public a written  
27 policy that:

28           A. Applies only to the employees of the private entity; and

29           B. Is used solely within the private entity for the operation of the private entity.

30           **§9604. Storage, transmission and protection**

31           **1. Standards.** A private entity that collects or possesses a biometric identifier shall  
32 store, transmit and protect from disclosure that biometric identifier in a manner that is:

33           A. Consistent with the reasonable standard of care used in the private entity's industry;  
34 and

35           B. As protective or more protective than the manner in which the private entity stores,  
36 transmits and protects from disclosure other confidential and sensitive information.

37           **2. Confidential and sensitive information.** For purposes of this section, "confidential  
38 and sensitive information" means personal information that can be used to identify an  
39 individual or an individual's account or property, including:

40           A. Genetic testing information;

- 1           B. A unique or personal identification number;
- 2           C. An account number;
- 3           D. A pass code;
- 4           E. A driver's license number; and
- 5           F. A social security number.

6           **§9605. Required disclosure**

7           **1. Disclosure required.** On the request of an individual, a private entity that collects  
8           or possesses a biometric identifier shall disclose to that individual, free of charge, any  
9           biometric identifier associated with that individual and the information required by  
10           subsection 2.

11           **2. Required information.** The information disclosed as required by subsection 1 must  
12           include all the relevant information for the period beginning 12 months before the biometric  
13           identifier was collected by or entered into the possession of the private entity and ending  
14           on the date of disclosure under this section, including:

- 15           A. The type of biometric identifier;
- 16           B. All personal information related to the biometric identifier;
- 17           C. The types of sources from which the private entity obtained the biometric identifier  
18           and personal information linked to the biometric identifier;
- 19           D. The use of the biometric identifier and personal information linked to the biometric  
20           identifier;
- 21           E. The type of 3rd party with which the private entity has shared the biometric  
22           identifier; and
- 23           F. The type of personal information linked to the biometric identifier that the private  
24           entity has disclosed to a 3rd party.

25           **§9606. Prohibitions**

26           **1. Collection or dissemination without consent.** A private entity may not collect,  
27           purchase, receive through trade or otherwise obtain, use, disclose, transfer or otherwise  
28           disseminate an individual's biometric identifier unless the private entity first:

- 29           A. Informs the individual in writing that a biometric identifier is being collected,  
30           purchased, received through trade or otherwise obtained, used, disclosed, transferred  
31           or otherwise disseminated;
- 32           B. Informs the individual in writing of the specific purpose and length of time for  
33           which a biometric identifier is being collected, purchased, received through trade or  
34           otherwise obtained, used, disclosed, transferred or otherwise disseminated; and
- 35           C. Receives affirmative written consent from the individual. Affirmative written  
36           consent may be given by electronic means.

37           This subsection does not apply to a disclosure of a biometric identifier if the disclosure  
38           completes a financial transaction requested or authorized by the individual, is required by  
39           state or federal law or municipal ordinance, is required pursuant to a valid warrant or

1 subpoena issued by a court of competent jurisdiction or is in response to a compulsory  
2 request or demand issued in an investigation conducted pursuant to state or federal law.

3 **2. Sale, lease or trade prohibited.** A private entity that collects a biometric identifier  
4 may not sell, lease, trade or otherwise profit from that biometric identifier.

5 **3. Discrimination.** A private entity may not:

6 A. Condition a sale of goods or the provision of a service on the collection, use,  
7 disclosure, transfer, sale or processing of a biometric identifier unless the use of a  
8 biometric identifier is strictly necessary to the sale of the goods or the provision of the  
9 service;

10 B. Charge a different price or rate for goods or the provision of a service to a customer  
11 that does not provide affirmative written consent to providing a biometric identifier; or

12 C. Provide a different quality of goods or a service to a customer that does not provide  
13 affirmative written consent to providing a biometric identifier.

14 **4. Processors.** A processor may not sell, lease or trade a biometric identifier. A  
15 processor may not collect, store, process, use, disclose or conduct any action for profit or  
16 otherwise on or with biometric identifiers, except as authorized by a contract with a private  
17 entity that legally possesses the biometric identifiers.

18 A. A contract between the processor and the private entity described by this subsection  
19 must expressly prohibit the processor from disclosing, retaining or using the biometric  
20 identifiers outside of the direct contractual relationship with the private entity.

21 B. A private entity that contracts with a processor to process or store biometric  
22 identifiers may not allow the processor to collect, store, process, use, disclose or  
23 conduct any action for profit or otherwise on or with biometric identifiers except for  
24 purposes for which the private entity received express affirmative written consent from  
25 the individual.

26 **§9607. Remedies for violation**

27 **1. Private right of action.** An individual whose biometric identifier is the subject of  
28 a violation of this chapter may bring an action against an offending private entity. If the  
29 individual prevails in the action, the individual is entitled to:

30 A. For a violation of this chapter:

31 (1) As a result of negligence, actual damages or \$1,000 per violation, whichever  
32 is greater; or

33 (2) As a result of recklessness or intentional misconduct, actual damages or \$5,000  
34 per violation, whichever is greater;

35 B. Reasonable attorney's fees and court costs, including expert witness fees and other  
36 litigation expenses; and

37 C. Other relief, including injunctive or equitable relief, as the court determines  
38 appropriate.

39 **2. Unfair trade practice.** In addition to subsection 1, any violation of this chapter  
40 constitutes prima facie evidence of a violation of the Maine Unfair Trade Practices Act.

41 **§9608. Effective date**



1 any other source the implementation commission believes might provide useful  
2 information; and

3 5. Develop recommendations to improve and assist in the implementation of the Maine  
4 Revised Statutes, Title 10, chapter 1057.

5 **Sec. B-6. Staff assistance.** The Legislative Council shall provide necessary staffing  
6 services to the implementation commission, except that Legislative Council staff support  
7 is not authorized when the Legislature is in regular or special session.

8 **Sec. B-7. Report.** No later than November 2, 2022, the implementation commission  
9 shall submit a report that includes a summary of its activities and recommendations,  
10 including suggested legislation, to the joint standing committee of the Legislature having  
11 jurisdiction over judiciary matters and for presentation to the First Regular Session of the  
12 131st Legislature. The joint standing committee may report out legislation related to the  
13 report to the 131st Legislature in 2023.'

14 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section  
15 number to read consecutively.

## 16 SUMMARY

17 This amendment replaces the bill. It enacts the Maine Revised Statutes, Title 10,  
18 chapter 1057 as Part A and establishes an implementation commission in Part B. This  
19 amendment contains the following changes from the bill.

20 1. It clarifies that affirmative written consent may be given by electronic means.

21 2. It excludes from the definition of "biometric identifier" health care information  
22 obtained for health care as both of those terms are defined in the Maine Revised Statutes,  
23 Title 22, section 1711-C.

24 3. It excludes from the definition of "biometric identifier" information gathered for  
25 human research purposes that is subject to specific federal regulations as well as  
26 information that is used in clinical trials and other biomedical research.

27 4. It revises the term "private entity" to remove the requirement that a private entity  
28 conduct business and clarifies that "private entity" does not include an entity acting as a  
29 processor for another entity.

30 5. It adds a definition of "research" consistent with the existing health industry  
31 standards by referencing the definition in the federal policy for the protection of human  
32 subjects, which includes clinical trials and research activities to improve public health.

33 6. It removes language about the chapter's applicability to processors.

34 7. It excludes from application of the chapter personal information collected,  
35 processed, sold or disclosed pursuant to the federal Gramm-Leach-Bliley Act and its  
36 implementing regulations.

37 8. It excludes from application of the chapter information collected, used or disclosed  
38 for human subject research.

39 9. It requires a private entity in possession of biometric identifiers to develop and make  
40 available to the public a policy on the permanent destruction of biometric identifiers and  
41 requires the policy to include a potential destruction date of within 30 days after the private

1 entity receives a verified request from an individual to destroy that individual's biometric  
2 identifiers.

3 10. It requires that a private entity must comply with the policy it has adopted, except  
4 for an action taken in response to a state or federal law or municipal ordinance or a  
5 compulsory request or demand issued in an investigation conducted pursuant to state or  
6 federal law or taken to comply with a valid warrant, subpoena or other order issued by a  
7 court of competent jurisdiction.

8 11. It explicitly prohibits a private entity that collects or a processor that receives an  
9 individual's biometric identifier from selling, leasing, trading or otherwise profiting from  
10 that biometric identifier.

11 12. It clarifies that a processor may act only pursuant to a contract with a private entity  
12 that legally possesses the biometric identifiers and that the contract must prohibit the  
13 processor from disclosing, retaining or using biometric identifiers outside of the direct  
14 contractual relationship under the contract.

15 13. It prohibits a private entity that contracts with a processor to process or store  
16 biometric identifiers from allowing the processor to collect, store, process, use, disclose or  
17 conduct any action for profit or otherwise on or with the biometric identifiers except for  
18 purposes for which the private entity received express written consent from the individual.

19 14. It authorizes a private right of action against the processor as well as the private  
20 entity for alleged violations of the chapter. It also states a violation of the chapter is prima  
21 facie evidence of a violation of the Maine Unfair Trade Practices Act.

22 15. It adds an effective date of January 1, 2024 for the chapter.

23 16. It includes a construction provision to direct that Part A of this legislation may not  
24 be construed to affect or be an indication of legislative intent regarding the definition of  
25 "personal information" used in any other law of this State.

26 Part B establishes the Biometric Identifiers Protection Implementation Commission  
27 consisting of 3 Senators and 4 members of the House of Representatives. The  
28 implementation commission is required to review the Maine Revised Statutes, Title 10,  
29 chapter 1057 to determine if amendments are necessary to improve and assist in the  
30 implementation of that chapter. The implementation commission is required to invite  
31 various stakeholders to provide information to assist the implementation commission in  
32 developing recommendations for amending that chapter. The joint standing committee of  
33 the Legislature having jurisdiction over judiciary matters may submit legislation to the  
34 131st Legislature in 2023.

35 **FISCAL NOTE REQUIRED**

36 **(See attached)**