

SECOND REGULAR SESSION

# HOUSE BILL NO. 3537

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CHRIST.

7496H.02I

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To amend chapter 1, RSMo, by adding thereto five new sections relating to the enhanced personal privacy act.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 1, RSMo, is amended by adding thereto five new sections, to be known as sections 1.561, 1.563, 1.566, 1.567, and 1.572, to read as follows:

**1.561. Sections 1.561 to 1.572 shall be known and may be cited as the "Enhanced Personal Privacy Act".**

**1.563. As used in sections 1.561 to 1.572, the following terms mean:**

**(1) "Biometric identifier", data generated by automatic measurements of an individual's biological characteristics such as a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, or any other biological characteristic that is used to uniquely identify an individual. "Biometric identifier" does not include:**

**(a) Writing samples; written signatures; a photograph or video, or data generated therefrom; human biological samples used for valid scientific testing or screening; demographic data; tattoo descriptions; or physical descriptions such as height, weight, hair color, or eye color;**

**(b) Any donated organ, tissue, or part, as those terms are defined under section 194.210, or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency;**

**(c) Information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

16 federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191;  
17 or

18 (d) An X-ray, roentgen process, computed tomography, MRI, PET scan,  
19 mammography, or other image or film of the human anatomy used to diagnose,  
20 prognose, or treat an illness or other medical condition or to further validate scientific  
21 testing or screening;

22 (2) "Commercial purpose", a purpose in furtherance of the sale or disclosure to  
23 a third party of a biometric identifier for the purpose of marketing goods or services  
24 when such goods or services are unrelated to the initial transaction in which a private  
25 entity first gains possession of an individual's biometric identifier. "Commercial  
26 purpose" does not include a security purpose or law enforcement purpose;

27 (3) "Confidential and sensitive information", personal information that can be  
28 used to uniquely identify an individual or an individual's account or property.  
29 Examples of "confidential and sensitive information" include, but are not limited to, a  
30 genetic marker, genetic testing information, a unique identifier number to locate an  
31 account or property, an account number, a PIN number, a pass code, a driver's license  
32 number, or a Social Security number;

33 (4) "Consent", an individual has reasonable access to a notice that informs the  
34 person or customer, or the person's or customer's legally authorized representative,  
35 that:

36 (a) A biometric identifier is being collected and stored; and

37 (b) That of the specific purpose and length of term for which a biometric  
38 identifier is being collected, stored, and used, and the individual impliedly authorizes the  
39 practices described in the notice through action or inaction, including silence or  
40 continuing to engage with the private party.

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42 "Consent" shall not be construed to require affirmative consent;

43 (5) "Private entity", any individual acting in a commercial context, partnership,  
44 corporation, limited liability company, association, or other group however organized.  
45 "Private entity" does not include a state or local government agency. "Private entity"  
46 does not include any court of Missouri, a clerk of the court, or a judge or justice thereof;

47 (6) "Security purpose", the purpose of preventing shoplifting, fraud, or any  
48 other misappropriation or theft of a thing of value, including tangible and intangible  
49 goods, services, and other purposes in furtherance of protecting the security or integrity  
50 of software, accounts, applications, online services, or any person.

1.566. 1. Any private entity in possession of biometric identifiers shall develop a  
2 written policy establishing a retention schedule and guidelines for permanently

3 **destroying biometric identifiers when the initial purpose for collecting or obtaining such**  
4 **identifiers has been satisfied, or within one year of the individual's last interaction with**  
5 **the private entity, whichever occurs first. Absent a valid warrant issued by a court of**  
6 **competent jurisdiction, a private entity in possession of biometric identifiers shall**  
7 **comply with its established retention schedule and destruction guidelines.**

8 **2. No private entity shall collect, capture, purchase, receive through trade, or**  
9 **otherwise obtain a person's or a customer's biometric identifier for a commercial**  
10 **purpose unless it receives consent from the person or customer, or the person's or**  
11 **customer's legally authorized representative.**

12 **3. Any entity or individual required to comply with the federal Health Insurance**  
13 **Portability and Accountability Act, Pub. L. No. 104-191, shall treat biometric identifiers**  
14 **as individually identifiable health information and unique health identifiers protected**  
15 **under that act and the rules promulgated thereunder.**

16 **4. No private entity in possession of a biometric identifier shall sell, lease, trade,**  
17 **disclose, redisclose, or otherwise disseminate a person's or a customer's biometric**  
18 **identifier for a commercial purpose unless:**

19 **(1) The person or customer, or the person's or customer's legally authorized**  
20 **representative provides consent;**

21 **(2) The disclosure completes a financial transaction requested or authorized by**  
22 **the person or customer, or the person's or customer's legally authorized representative;**

23 **(3) The disclosure is made to a third party who contractually promises that the**  
24 **biometric identifier shall not be further disclosed and shall not be retained for a purpose**  
25 **inconsistent with the consent under subsection 2 of this section;**

26 **(4) The disclosure is required by state law, federal law, or municipal ordinance;**  
27 **or**

28 **(5) The disclosure is made to prepare for litigation, to respond to or participate**  
29 **in a judicial process, or is required under a court order or valid warrant issued by a**  
30 **court of competent jurisdiction.**

31 **5. A private entity in possession of a biometric identifier shall:**

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

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

**1.567. The attorney general has exclusive authority to enforce sections 1.561 to**  
2 **1.572. A violation of sections 1.561 to 1.572 does not provide a basis for, nor is a**

3 violation of such sections subject to, a private right of action under sections 1.561 to  
4 1.572 or any other law.

1.572. 1. Nothing in sections 1.561 to 1.572 shall be construed to impact the  
2 admission or discovery of biometric identifiers in any action of any kind in any court, or  
3 before any tribunal, board, agency, or person.

4 2. Nothing in sections 1.561 to 1.572 shall be construed to conflict with section  
5 334.097 or with the federal Health Insurance Portability and Accountability Act of 1996,  
6 Pub. L. 104-191, or the rules promulgated thereunder.

7 3. Nothing in sections 1.561 to 1.572 shall be deemed to apply in any manner to a  
8 financial institution or an affiliate of a financial institution that is subject to Title V of  
9 the federal Gramm-Leach-Bliley Act of 1999, Pub. L. 106-102, and the rules  
10 promulgated thereunder.

11 4. Nothing in sections 1.561 to 1.572 shall be construed to apply to a contractor,  
12 subcontractor, or agent of a state agency or local unit of government when working for  
13 that state agency or local unit of government.

14 5. Nothing in sections 1.561 to 1.572 shall be construed to require an entity to  
15 provide notice and obtain consent to collect, capture, purchase, receive through trade,  
16 otherwise obtain, use, sell, lease, trade, disclose, redisclose, or otherwise disseminate a  
17 biometric identifier in furtherance of a security purpose.

18 6. Nothing in sections 1.561 to 1.572 shall be construed to apply to biometric  
19 identifiers collected or used by a private entity in the context of employment.

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