

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 511

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE COLLECTION OF INFORMATION; AMENDING TITLE 67, IDAHO CODE, BY
2 THE ADDITION OF A NEW CHAPTER 92, TITLE 67, IDAHO CODE, TO PROVIDE DEFINI-
3 TIONS, TO ESTABLISH PROVISIONS RELATING TO THE RESPONSIBILITY OF PRI-
4 VATE ENTITIES IN COLLECTING AND STORING CERTAIN INFORMATION, TO PROVIDE
5 FOR A RIGHT OF ACTION AND DAMAGES AND TO PROVIDE FOR THE APPLICATION OF
6 LAW.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 92, Title 67, Idaho Code, and to read as follows:

12 CHAPTER 92

13 IDAHO BIOMETRIC DATA PROTECTION ACT

14 67-9201. DEFINITIONS. For purposes of this act the following terms
15 shall have the following meanings:

16 (1) "Biometric identifier" means a retina or iris scan, fingerprint,
17 palm print, voiceprint, or scan of hand or face geometry, digitized facial
18 recognition data or human DNA. Biometric identifiers do not include writing
19 samples, written signatures, photographs, human biological samples used for
20 valid scientific or medical testing or screening, demographic data, tattoo
21 descriptions or physical descriptions such as height, weight, hair color or
22 eye color. Biometric identifiers do not include donated organs, tissues,
23 body parts or blood or serum stored on behalf of recipients or potential re-
24 cipients of living or cadaveric transplants and obtained or stored by a fed-
25 erally designated organ procurement agency. Biometric identifiers do not
26 include biological materials regulated under the genetic information pri-
27 vacy act. Biometric identifiers do not include information obtained dur-
28 ing an exam or medical procedure or obtained from a patient in a health care
29 setting or information collected, used or stored for health care treatment,
30 payment or operations under the federal health insurance portability and ac-
31 countability act of 1996. Biometric identifiers do not include an X-ray,
32 roentgen process, computed tomography, MRI, PET scan, mammography, or other
33 image or film of the human anatomy used to diagnose or treat an illness or
34 other medical condition or to further validate scientific testing or screen-
35 ing.

36 (2) "Biometric information" means any information, regardless of how
37 it is captured, converted, stored or shared, based upon an individual's
38 biometric identifier used to identify an individual. Biometric information
39 does not include information derived from items or procedures excluded under
40 the definition of biometric identifiers.

1 (3) "Confidential and sensitive information" means personal informa-
2 tion that can be used to uniquely identify an individual. Examples of confi-
3 dential and sensitive information include, but are not limited to, a genetic
4 marker, genetic testing information, DNA or DNA analysis, a unique identi-
5 fier number to locate an account or property, an account number, a PIN num-
6 ber, a pass code, a driver's license number or a social security number.

7 (4) "Private entity" means any individual, partnership, corporation,
8 limited liability company, association or other group, however organized. A
9 private entity does not include a state or local government agency. A pri-
10 vate entity does not include any court of the state of Idaho or any political
11 subdivision of the state or any state or local law enforcement agency.

12 67-9202. RESPONSIBILITY OF PRIVATE ENTITY FOR CERTAIN INFORMATION --
13 REQUIREMENTS TO SAFEGUARD. (1) A private entity in possession of biometric
14 identifiers or biometric information must develop a written policy, posted
15 and available to the public, in the entity's place of business, establish-
16 ing a retention schedule and guidelines for permanently destroying biomet-
17 ric identifiers and biometric information when the initial purpose for col-
18 lecting or obtaining such identifiers or information has been satisfied or
19 within three (3) years of the individual's last business dealings with the
20 private entity, whichever occurs first. A private entity must comply with
21 its established retention schedule and biometric identifier data destruc-
22 tion guidelines.

23 (2) No private entity may collect, capture, purchase, exchange or oth-
24 erwise obtain a person's or a customer's biometric identifier or biometric
25 information, unless it first:

26 (a) Informs the subject in writing that a biometric identifier or bio-
27 metric information is being collected or stored;

28 (b) Informs the subject in writing of the specific purpose and the
29 length of term for which a biometric identifier or biometric informa-
30 tion is being collected, stored and used; and

31 (c) Receives a written release executed by the subject of the biometric
32 identifier or biometric information.

33 (3) No private entity in possession of a biometric identifier or biomet-
34 ric information may sell, lease, donate, trade, copy or transfer or other-
35 wise profit from a person's or a customer's biometric identifier or biomet-
36 ric information.

37 (4) No private entity in possession of a biometric identifier or biomet-
38 ric information may disclose, copy or otherwise disseminate a person's or a
39 customer's biometric identifier or biometric information unless:

40 (a) The subject of the biometric identifier or biometric information
41 consents to the disclosure;

42 (b) The disclosure completes a financial or contractual transaction
43 requested or authorized by the subject of the biometric identifier or
44 the biometric information;

45 (c) The disclosure is required by state or federal law or municipal or-
46 dinance; or

47 (d) The disclosure is required pursuant to a valid warrant or subpoena
48 issued by a court.

1 (5) A private entity in possession of a biometric identifier or biomet-
2 ric information shall:

3 (a) Securely store, transmit and protect from copying or disclosure all
4 biometric identifiers and biometric information using the reasonable
5 standard of care within the private entity's industry; and

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

11 67-9203. RIGHT OF ACTION -- DAMAGES. Any person aggrieved by a viola-
12 tion of this act shall have a right of action in a district court or in federal
13 court against an offending party. A prevailing party may recover for each
14 violation:

15 (1) Against a private entity that negligently violates a provision of
16 this act, liquidated damages of one thousand dollars (\$1,000) or actual dam-
17 ages, whichever is greater;

18 (2) Against a private entity that intentionally or recklessly vio-
19 lates a provision of this act, liquidated damages of five thousand dollars
20 (\$5,000) or actual damages, whichever is greater;

21 (3) Reasonable attorney's fees and costs; and

22 (4) Other relief, including an injunction, as the court may deem appro-
23 priate.

24 67-9204. APPLICATION OF LAW. (1) Nothing in this act shall be con-
25 strued to impact the admission or discovery of biometric identifiers and
26 biometric information in any action of any kind in any court, or before any
27 tribunal, board, agency or person.

28 (2) Nothing in this act shall be construed to conflict with the federal
29 health insurance portability and accountability act of 1996.

30 (3) Nothing in this act shall apply to the storage or retention of pa-
31 tient medical records retention policies mandated by any state or federal
32 law.