

REFERENCE TITLE: **biological characteristics; biometric identifiers**

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2478

Introduced by
Representative Bowers

AN ACT

**AMENDING TITLE 44, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 37;
RELATING TO BIOLOGICAL CHARACTERISTICS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 44, Arizona Revised Statutes, is amended by adding
3 chapter 37, to read:

4 CHAPTER 37

5 BIOMETRIC IDENTIFIERS

6 ARTICLE 1. GENERAL PROVISIONS

7 44-7901. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "BIOMETRIC IDENTIFIER":

10 (a) MEANS DATA THAT IS GENERATED BY AUTOMATIC MEASUREMENTS OF AN
11 INDIVIDUAL'S BIOLOGICAL CHARACTERISTICS, INCLUDING A FINGERPRINT,
12 VOICEPRINT, RETINA, IRIS OR OTHER UNIQUE BIOLOGICAL PATTERN OR
13 CHARACTERISTIC THAT IS USED TO IDENTIFY A SPECIFIC INDIVIDUAL.

14 (b) DOES NOT INCLUDE A PHYSICAL OR DIGITAL PHOTOGRAPH, A VIDEO OR
15 AUDIO RECORDING, ANY DATA GENERATED FROM A PHYSICAL OR DIGITAL PHOTOGRAPH
16 OR VIDEO OR AUDIO RECORDING OR ANY INFORMATION COLLECTED, USED OR STORED
17 FOR HEALTH CARE TREATMENT, PAYMENT OR OPERATIONS UNDER THE HEALTH
18 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (P.L. 104-191; 110
19 STAT. 1936).

20 2. "BIOMETRIC SYSTEM" MEANS AN AUTOMATED IDENTIFICATION SYSTEM THAT
21 IS CAPABLE OF CAPTURING, PROCESSING AND STORING A BIOMETRIC IDENTIFIER,
22 COMPARING THE BIOMETRIC IDENTIFIER TO ONE OR MORE REFERENCES AND MATCHING
23 THE BIOMETRIC IDENTIFIER TO A SPECIFIC INDIVIDUAL.

24 3. "CAPTURE" MEANS THE PROCESS OF COLLECTING A BIOMETRIC IDENTIFIER
25 FROM AN INDIVIDUAL.

26 4. "COMMERCIAL PURPOSE":

27 (a) MEANS A PURPOSE IN FURTHERANCE OF THE SALE OR DISCLOSURE TO A
28 THIRD PARTY OF A BIOMETRIC IDENTIFIER FOR THE PURPOSE OF MARKETING GOODS
29 OR SERVICES IF THE GOODS OR SERVICES ARE UNRELATED TO THE INITIAL
30 TRANSACTION IN WHICH A PERSON FIRST GAINS POSSESSION OF AN INDIVIDUAL'S
31 BIOMETRIC IDENTIFIER.

32 (b) DOES NOT INCLUDE A SECURITY OR LAW ENFORCEMENT PURPOSE.

33 5. "ENROLL" MEANS TO DO ALL OF THE FOLLOWING:

34 (a) CAPTURE AN INDIVIDUAL'S BIOMETRIC IDENTIFIER.

35 (b) CONVERT THE BIOMETRIC IDENTIFIER INTO A REFERENCE TEMPLATE THAT
36 CANNOT BE RECONSTRUCTED INTO THE ORIGINAL OUTPUT IMAGE.

37 (c) STORE THE BIOMETRIC IDENTIFIER IN A DATABASE THAT MATCHES THE
38 BIOMETRIC IDENTIFIER TO A SPECIFIC INDIVIDUAL.

39 6. "SECURITY PURPOSE" MEANS THE PURPOSE OF PREVENTING SHOPLIFTING,
40 FRAUD OR OTHER MISAPPROPRIATION OR THEFT OF A THING OF VALUE, INCLUDING
41 TANGIBLE AND INTANGIBLE GOODS OR SERVICES, AND OTHER PURPOSES IN
42 FURTHERANCE OF PROTECTING THE SECURITY OR INTEGRITY OF SOFTWARE, ACCOUNTS,
43 APPLICATIONS, ONLINE SERVICES OR ANY PERSON.

1 44-7902. Enrollment; disclosure and retention of biometric
2 identifiers

3 A. A PERSON MAY NOT ENROLL AN INDIVIDUAL'S BIOMETRIC IDENTIFIER IN
4 A DATABASE FOR A COMMERCIAL PURPOSE UNLESS THE PERSON PROVIDES A MECHANISM
5 TO PREVENT THE SUBSEQUENT USE OF A BIOMETRIC IDENTIFIER FOR A COMMERCIAL
6 PURPOSE OR THE PERSON DOES BOTH OF THE FOLLOWING:

7 1. PROVIDES NOTICE TO THE INDIVIDUAL THAT THE INDIVIDUAL'S
8 BIOMETRIC IDENTIFIER WILL BE ENROLLED IN A DATABASE FOR A COMMERCIAL
9 PURPOSE.

10 2. OBTAINS CONSENT FROM THE INDIVIDUAL TO ENROLL THE INDIVIDUAL'S
11 BIOMETRIC IDENTIFIER IN A DATABASE FOR A COMMERCIAL PURPOSE.

12 B. UNLESS A PERSON OBTAINS AN INDIVIDUAL'S CONSENT PURSUANT TO
13 SUBSECTION A OF THIS SECTION, THE PERSON MAY NOT SELL, LEASE OR OTHERWISE
14 DISCLOSE THE INDIVIDUAL'S BIOMETRIC IDENTIFIER TO ANOTHER PERSON FOR A
15 COMMERCIAL PURPOSE UNLESS THE DISCLOSURE IS ANY OF THE FOLLOWING:

16 1. NECESSARY TO PROVIDE A PRODUCT OR SERVICE SUBSCRIBED TO,
17 REQUESTED OR EXPRESSLY AUTHORIZED BY THE INDIVIDUAL.

18 2. NECESSARY TO EFFECT, ADMINISTER, ENFORCE OR COMPLETE A FINANCIAL
19 TRANSACTION THAT THE INDIVIDUAL REQUESTED, INITIATED OR AUTHORIZED, AND
20 THE THIRD PARTY TO WHOM THE BIOMETRIC IDENTIFIER IS DISCLOSED MAINTAINS
21 THE CONFIDENTIALITY OF THE BIOMETRIC IDENTIFIER AND DOES NOT FURTHER
22 DISCLOSE THE BIOMETRIC IDENTIFIER EXCEPT AS OTHERWISE ALLOWED UNDER THIS
23 SUBSECTION.

24 3. REQUIRED OR EXPRESSLY AUTHORIZED BY A FEDERAL OR STATE LAW OR
25 COURT ORDER.

26 4. MADE TO A THIRD PARTY THAT CONTRACTUALLY PROMISES THAT THE
27 BIOMETRIC IDENTIFIER WILL NOT BE FURTHER DISCLOSED AND WILL NOT BE
28 ENROLLED IN A DATABASE FOR A COMMERCIAL PURPOSE INCONSISTENT WITH THE
29 NOTICE AND CONSENT REQUIREMENTS DESCRIBED IN THIS SECTION.

30 5. MADE TO PREPARE FOR LITIGATION OR TO RESPOND TO OR PARTICIPATE
31 IN THE JUDICIAL PROCESS.

32 C. A PERSON THAT KNOWINGLY POSSESSES AN INDIVIDUAL'S BIOMETRIC
33 IDENTIFIER THAT HAS BEEN ENROLLED FOR A COMMERCIAL PURPOSE:

34 1. MUST TAKE REASONABLE CARE TO GUARD AGAINST UNAUTHORIZED ACCESS
35 TO AND ACQUISITION OF THE BIOMETRIC IDENTIFIER.

36 2. MAY NOT RETAIN THE BIOMETRIC IDENTIFIER LONGER THAN IS
37 REASONABLY NECESSARY TO:

38 (a) COMPLY WITH A COURT ORDER, STATUTE OR PUBLIC RECORDS RETENTION
39 SCHEDULE SPECIFIED UNDER FEDERAL, STATE OR LOCAL LAW.

40 (b) PROTECT AGAINST OR PREVENT ACTUAL OR POTENTIAL FRAUD, CRIMINAL
41 ACTIVITY, CLAIMS, SECURITY THREATS OR LIABILITY.

42 (c) PROVIDE THE SERVICES FOR WHICH THE BIOMETRIC IDENTIFIER WAS
43 ENROLLED.

1 D. A PERSON THAT ENROLLS AN INDIVIDUAL'S BIOMETRIC IDENTIFIER FOR A
2 COMMERCIAL PURPOSE OR THAT OBTAINS AN INDIVIDUAL'S BIOMETRIC IDENTIFIER
3 FROM A THIRD PARTY FOR A COMMERCIAL PURPOSE MAY NOT USE OR DISCLOSE THE
4 BIOMETRIC IDENTIFIER IN A MANNER THAT IS MATERIALLY INCONSISTENT WITH THE
5 TERMS UNDER WHICH THE BIOMETRIC IDENTIFIER WAS ORIGINALLY PROVIDED WITHOUT
6 OBTAINING THE INDIVIDUAL'S CONSENT FOR THE NEW TERMS OF USE OR DISCLOSING
7 TO THE INDIVIDUAL THE NEW TERMS OF USE.

8 E. THE LIMITS ON DISCLOSURE AND RETENTION OF BIOMETRIC IDENTIFIERS
9 PRESCRIBED IN THIS SECTION DO NOT APPLY TO THE DISCLOSURE OR RETENTION OF
10 BIOMETRIC IDENTIFIERS THAT HAVE BEEN UNENROLLED.

11 F. A PERSON IS NOT REQUIRED TO PROVIDE NOTICE AND OBTAIN CONSENT TO
12 CAPTURE OR ENROLL A BIOMETRIC IDENTIFIER AND STORE IT IN A BIOMETRIC
13 SYSTEM IF THE PERSON IS ACTING TO FURTHER A SECURITY PURPOSE.

14 44-7903. Unlawful practice; attorney general

15 A VIOLATION OF THIS CHAPTER IS AN UNLAWFUL PRACTICE UNDER SECTION
16 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE ACTION
17 AS PRESCRIBED BY CHAPTER 10, ARTICLE 7 OF THIS TITLE.

18 44-7904. Applicability; law enforcement officer's authority

19 A. THIS CHAPTER DOES NOT APPLY TO EITHER OF THE FOLLOWING:

20 1. A FINANCIAL INSTITUTION OR AN AFFILIATE OF A FINANCIAL
21 INSTITUTION THAT IS SUBJECT TO TITLE V OF THE GRAMM-LEACH-BLILEY ACT
22 (P.L. 106-102; 113 STAT. 1338; 15 UNITED STATES CODE SECTIONS 6801 THROUGH
23 6809).

24 2. ACTIVITIES THAT ARE SUBJECT TO THE HEALTH INSURANCE PORTABILITY
25 AND ACCOUNTABILITY ACT OF 1996 (P.L. 104-191; 110 STAT. 1936).

26 B. THIS CHAPTER DOES NOT EXPAND OR LIMIT THE AUTHORITY OF A LAW
27 ENFORCEMENT OFFICER ACTING WITHIN THE SCOPE OF THE LAW ENFORCEMENT
28 OFFICER'S AUTHORITY, INCLUDING A LAW ENFORCEMENT OFFICER'S AUTHORITY TO
29 EXECUTE LAWFUL SEARCHES AND SEIZURES.