

REFERENCE TITLE: **biometrics identifiers; collection; retention; disclosure**

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

# **SB 1238**

Introduced by  
Senator Rogers

**AN ACT**

**AMENDING TITLE 18, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; RELATING TO BIOMETRIC INFORMATION.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 18, Arizona Revised Statutes, is amended by adding  
3 chapter 7, to read:

4 CHAPTER 7  
5 BIOMETRIC IDENTIFIERS  
6 ARTICLE 1. GENERAL PROVISIONS

7 18-701. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "BIOMETRIC IDENTIFIER":

10 (a) MEANS A RETINA OR IRIS SCAN, FINGERPRINT, VOICEPRINT OR SCAN OF  
11 HAND OR FACE GEOMETRY.

12 (b) DOES NOT INCLUDE:

13 (i) WRITING SAMPLES, WRITTEN SIGNATURES, PHOTOGRAPHS, HUMAN  
14 BIOLOGICAL SAMPLES USED FOR VALID SCIENTIFIC TESTING OR SCREENING,  
15 DEMOGRAPHIC DATA, TATTOO DESCRIPTIONS OR PHYSICAL DESCRIPTIONS SUCH AS  
16 HEIGHT, WEIGHT, HAIR COLOR OR EYE COLOR.

17 (ii) DONATED ORGANS AS DEFINED IN SECTION 41-706, TISSUES AS  
18 DEFINED IN SECTION 36-841 OR BLOOD OR SERUM THAT IS STORED ON BEHALF OF  
19 RECIPIENTS OR POTENTIAL RECIPIENTS OF LIVING OR CADAVERIC TRANSPLANTS AND  
20 THAT IS OBTAINED OR STORED BY A FEDERALLY DESIGNATED ORGAN PROCUREMENT  
21 AGENCY.

22 (iii) BIOLOGICAL MATERIALS THAT ARE REGULATED UNDER THE GENETIC  
23 INFORMATION NONDISCRIMINATION ACT OF 2008 (P.L. 110-233; 122 STAT. 881).

24 (iv) INFORMATION THAT IS CAPTURED FROM A PATIENT IN A HEALTH CARE  
25 SETTING OR INFORMATION THAT IS COLLECTED, USED OR STORED FOR HEALTH CARE  
26 TREATMENT, PAYMENT OR OPERATIONS UNDER THE HEALTH INSURANCE PORTABILITY  
27 AND ACCOUNTABILITY ACT OF 1996 (P.L. 104-191; 110 STAT. 1936).

28 (v) AN X-RAY, ROENTGEN PROCESS, COMPUTED TOMOGRAPHY, MAGNETIC  
29 RESONANCE IMAGING, POSITRON EMISSION TOMOGRAPHY SCAN, MAMMOGRAPHY OR OTHER  
30 IMAGE OR FILM OF THE HUMAN ANATOMY THAT IS USED TO DIAGNOSE OR TREAT AN  
31 ILLNESS OR OTHER MEDICAL CONDITION OR TO FURTHER VALIDATE SCIENTIFIC  
32 TESTING OR SCREENING.

33 2. "BIOMETRIC INFORMATION":

34 (a) MEANS ANY INFORMATION, REGARDLESS OF HOW IT IS CAPTURED,  
35 CONVERTED, STORED OR SHARED, BASED ON AN INDIVIDUAL'S BIOMETRIC IDENTIFIER  
36 THAT IS USED TO IDENTIFY AN INDIVIDUAL.

37 (b) DOES NOT INCLUDE INFORMATION THAT IS DERIVED FROM ITEMS OR  
38 PROCEDURES THAT ARE EXCLUDED UNDER THE DEFINITION OF BIOMETRIC IDENTIFIER.

39 3. "CONFIDENTIAL AND SENSITIVE INFORMATION":

40 (a) MEANS PERSONAL INFORMATION THAT CAN BE USED TO UNIQUELY  
41 IDENTIFY AN INDIVIDUAL OR AN INDIVIDUAL'S ACCOUNT OR PROPERTY.

42 (b) INCLUDES A GENETIC MARKER, GENETIC TESTING INFORMATION, A  
43 UNIQUE IDENTIFIER NUMBER TO LOCATE AN ACCOUNT OR PROPERTY, AN ACCOUNT  
44 NUMBER, A PERSONAL IDENTIFICATION NUMBER, A PASS CODE, A DRIVER LICENSE  
45 NUMBER OR A SOCIAL SECURITY NUMBER.

1 4. "PRIVATE ENTITY":

2 (a) MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED  
3 LIABILITY COMPANY, ASSOCIATION OR OTHER GROUP, HOWEVER ORGANIZED.

4 (b) DOES NOT INCLUDE A STATE OR LOCAL GOVERNMENT AGENCY, ANY COURT  
5 IN THIS STATE, A CLERK OF THE COURT, A JUSTICE OR A JUDGE.

6 5. "WRITTEN RELEASE" MEANS INFORMED WRITTEN CONSENT OR, IN THE  
7 CONTEXT OF EMPLOYMENT, A RELEASE THAT IS EXECUTED BY AN EMPLOYEE AS A  
8 CONDITION OF EMPLOYMENT.

9 18-702. Retention; collection; disclosure; destruction

10 A. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR  
11 BIOMETRIC INFORMATION MUST DEVELOP AND MAKE AVAILABLE TO THE PUBLIC A  
12 WRITTEN POLICY THAT ESTABLISHES A RETENTION SCHEDULE AND GUIDELINES FOR  
13 PERMANENTLY DESTROYING BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION  
14 WHEN THE INITIAL PURPOSE FOR COLLECTING OR OBTAINING THE IDENTIFIERS OR  
15 INFORMATION HAS BEEN SATISFIED OR WITHIN THREE YEARS AFTER THE  
16 INDIVIDUAL'S LAST INTERACTION WITH THE PRIVATE ENTITY, WHICHEVER OCCURS  
17 FIRST. UNLESS A COURT OF COMPETENT JURISDICTION HAS ISSUED A VALID  
18 WARRANT OR SUBPOENA, A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC  
19 IDENTIFIERS OR BIOMETRIC INFORMATION MUST COMPLY WITH ITS ESTABLISHED  
20 RETENTION SCHEDULE AND DESTRUCTION GUIDELINES.

21 B. A PRIVATE ENTITY MAY NOT COLLECT, CAPTURE, PURCHASE, RECEIVE  
22 THROUGH TRADE OR OTHERWISE OBTAIN A PERSON'S OR A CUSTOMER'S BIOMETRIC  
23 IDENTIFIER OR BIOMETRIC INFORMATION UNLESS IT FIRST DOES ALL OF THE  
24 FOLLOWING:

25 1. INFORMS THE SUBJECT OR THE SUBJECT'S LEGALLY AUTHORIZED  
26 REPRESENTATIVE IN WRITING THAT A BIOMETRIC IDENTIFIER OR BIOMETRIC  
27 INFORMATION IS BEING COLLECTED OR STORED.

28 2. INFORMS THE SUBJECT OR THE SUBJECT'S LEGALLY AUTHORIZED  
29 REPRESENTATIVE IN WRITING OF THE SPECIFIC PURPOSE AND LENGTH OF TERM FOR  
30 WHICH THE BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION IS BEING  
31 COLLECTED, STORED AND USED.

32 3. RECEIVES A WRITTEN RELEASE THAT IS EXECUTED BY THE SUBJECT OF  
33 THE BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION OR THE SUBJECT'S  
34 LEGALLY AUTHORIZED REPRESENTATIVE.

35 C. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR  
36 BIOMETRIC INFORMATION MAY NOT SELL, LEASE, TRADE OR OTHERWISE PROFIT FROM  
37 A PERSON'S BIOMETRIC IDENTIFIER OR BIOMETRIC INFORMATION.

38 D. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR  
39 BIOMETRIC INFORMATION MAY NOT DISCLOSE OR OTHERWISE DISSEMINATE A PERSON'S  
40 OR A CUSTOMER'S BIOMETRIC IDENTIFIER OR BIOMETRIC INFORMATION UNLESS ANY  
41 OF THE FOLLOWING APPLIES:

42 1. THE SUBJECT OF THE BIOMETRIC IDENTIFIERS OR BIOMETRIC  
43 INFORMATION OR THE SUBJECT'S LEGALLY AUTHORIZED REPRESENTATIVE CONSENTS TO  
44 THE DISCLOSURE OR DISSEMINATION.

45 2. THE DISCLOSURE OR DISSEMINATION COMPLETES A FINANCIAL  
46 TRANSACTION THAT IS REQUESTED OR AUTHORIZED BY THE SUBJECT OF THE

1 BIOMETRIC IDENTIFIERS OR THE BIOMETRIC INFORMATION OR THE SUBJECT'S  
2 LEGALLY AUTHORIZED REPRESENTATIVE.

3 3. THE DISCLOSURE OR DISSEMINATION IS REQUIRED BY STATE OR FEDERAL  
4 LAW OR MUNICIPAL ORDINANCE.

5 4. THE DISCLOSURE IS REQUIRED PURSUANT TO A VALID WARRANT OR  
6 SUBPOENA ISSUED BY A COURT OF COMPETENT JURISDICTION.

7 E. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR  
8 BIOMETRIC INFORMATION SHALL BOTH:

9 1. STORE, TRANSMIT AND PROTECT FROM DISCLOSURE ALL BIOMETRIC  
10 IDENTIFIERS AND BIOMETRIC INFORMATION USING THE REASONABLE STANDARD OF  
11 CARE WITHIN THE PRIVATE ENTITY'S INDUSTRY.

12 2. STORE, TRANSMIT AND PROTECT FROM DISCLOSURE ALL BIOMETRIC  
13 IDENTIFIERS AND BIOMETRIC INFORMATION IN A MANNER THAT IS THE SAME AS OR  
14 MORE PROTECTIVE THAN THE MANNER IN WHICH THE PRIVATE ENTITY STORES,  
15 TRANSMITS AND PROTECTS OTHER CONFIDENTIAL AND SENSITIVE INFORMATION.

16 18-703. Right of action; damages; other relief

17 A PERSON WHO IS AGGRIEVED BY A VIOLATION OF THIS CHAPTER MAY BRING  
18 AN ACTION IN THE SUPERIOR COURT OR AS A SUPPLEMENTAL CLAIM IN FEDERAL  
19 DISTRICT COURT AGAINST AN OFFENDING PARTY. FOR EACH VIOLATION, A  
20 PREVAILING PARTY MAY RECOVER:

21 1. AGAINST A PRIVATE ENTITY THAT NEGLIGENTLY VIOLATES THIS CHAPTER  
22 LIQUIDATED DAMAGES OF \$1,000 OR ACTUAL DAMAGES, WHICHEVER IS GREATER.

23 2. AGAINST A PRIVATE ENTITY THAT INTENTIONALLY OR RECKLESSLY  
24 VIOLATES THIS CHAPTER LIQUIDATED DAMAGES OF \$5,000 OR ACTUAL DAMAGES,  
25 WHICHEVER IS GREATER.

26 3. REASONABLE ATTORNEY FEES AND COSTS, INCLUDING EXPERT WITNESS  
27 FEES AND OTHER LITIGATION EXPENSES.

28 4. OTHER RELIEF, INCLUDING AN INJUNCTION, AS THE STATE OR FEDERAL  
29 COURT DEEMS APPROPRIATE.

30 18-704. Construction

31 A. THIS CHAPTER DOES NOT IMPACT THE ADMISSION OR DISCOVERY OF  
32 BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION IN ANY ACTION IN ANY COURT  
33 OR BEFORE ANY TRIBUNAL, BOARD, AGENCY OR PERSON.

34 B. THIS CHAPTER DOES NOT CONFLICT WITH THE HEALTH INSURANCE  
35 PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (P.L. 104-191; 110 STATE.  
36 1936).

37 C. THIS CHAPTER DOES NOT APPLY TO A FINANCIAL INSTITUTION OR AN  
38 AFFILIATE OF A FINANCIAL INSTITUTION THAT IS SUBJECT TO TITLE V, SUBTITLE  
39 A OF THE GRAMM-LEACH-BLILEY ACT (15 UNITED STATES CODE SECTIONS 6801  
40 THROUGH 6809) RELATED TO PRIVACY AND PROTECTION OF NONPUBLIC PERSONAL  
41 INFORMATION.

42 D. THIS CHAPTER DOES NOT APPLY TO A CONTRACTOR, SUBCONTRACTOR OR  
43 AGENT OF A STATE AGENCY OR LOCAL UNIT OF GOVERNMENT WHEN WORKING FOR THAT  
44 STATE AGENCY OR LOCAL UNIT OF GOVERNMENT.