AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

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

CHAPTER 7
BIOMETRIC IDENTIFIERS
ARTICLE 1. GENERAL PROVISIONS

18-701. Definitions
IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "BIOMETRIC IDENTIFIER":
   (a) MEANS A RETINA OR IRIS SCAN, FINGERPRINT, VOICEPRINT OR SCAN OF HAND OR FACE GEOMETRY.
   (b) DOES NOT INCLUDE:
       (i) WRITING SAMPLES, WRITTEN SIGNATURES, PHOTOGRAPHS, 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.
       (ii) DONATED ORGANS AS DEFINED IN SECTION 41-706, TISSUES AS DEFINED IN SECTION 36-841 OR BLOOD OR SERUM THAT IS STORED ON BEHALF OF RECIPIENTS OR POTENTIAL RECIPIENTS OF LIVING OR CADAVERIC TRANSPLANTS AND THAT IS OBTAINED OR STORED BY A FEDERALLY DESIGNATED ORGAN PROCUREMENT AGENCY.
       (iii) BIOLOGICAL MATERIALS THAT ARE REGULATED UNDER THE GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (P.L. 110-233; 122 STAT. 881).
       (iv) INFORMATION THAT IS Captured FROM A PATIENT IN A HEALTH CARE SETTING OR INFORMATION THAT IS COLLECTED, USED OR STORED FOR HEALTH CARE TREATMENT, PAYMENT OR OPERATIONS UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (P.L. 104-191; 110 STAT. 1936).
       (v) AN X-RAY, ROENTGEN PROCESS, COMPUTED TOMOGRAPHY, MAGNETIC RESONANCE IMAGING, POSITRON EMISSION TOMOGRAPHY SCAN, MAMMOGRAPHY OR OTHER IMAGE OR FILM OF THE HUMAN ANATOMY THAT IS USED TO DIAGNOSE OR TREAT AN ILLNESS OR OTHER MEDICAL CONDITION OR TO FURTHER VALIDATE SCIENTIFIC TESTING OR SCREENING.
2. "BIOMETRIC INFORMATION":
   (a) MEANS ANY INFORMATION, REGARDLESS OF HOW IT IS CAPTURED, CONVERTED, STORED OR SHARED, BASED ON AN INDIVIDUAL'S BIOMETRIC IDENTIFIER THAT IS USED TO IDENTIFY AN INDIVIDUAL.
   (b) DOES NOT INCLUDE INFORMATION THAT IS DERIVED FROM ITEMS OR PROCEDURES THAT ARE EXCLUDED UNDER THE DEFINITION OF BIOMETRIC IDENTIFIER.
3. "CONFIDENTIAL AND SENSITIVE INFORMATION":
   (a) MEANS PERSONAL INFORMATION THAT CAN BE USED TO UNIQUELY IDENTIFY AN INDIVIDUAL OR AN INDIVIDUAL'S ACCOUNT OR PROPERTY.
   (b) INCLUDES A GENETIC MARKER, GENETIC TESTING INFORMATION, A UNIQUE IDENTIFIER NUMBER TO LOCATE AN ACCOUNT OR PROPERTY, AN ACCOUNT NUMBER, A PERSONAL IDENTIFICATION NUMBER, A PASS CODE, A DRIVER LICENSE NUMBER OR A SOCIAL SECURITY NUMBER.
4. "PRIVATE ENTITY":
   (a) MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED
       LIABILITY COMPANY, ASSOCIATION OR OTHER GROUP, HOWEVER ORGANIZED.
   (b) DOES NOT INCLUDE A STATE OR LOCAL GOVERNMENT AGENCY, ANY COURT
       IN THIS STATE, A CLERK OF THE COURT, A JUSTICE OR A JUDGE.
5. "WRITTEN RELEASE" MEANS INFORMED WRITTEN CONSENT OR, IN THE
   CONTEXT OF EMPLOYMENT, A RELEASE THAT IS EXECUTED BY AN EMPLOYEE AS A
   CONDITION OF EMPLOYMENT.
18-702. Retention; collection; disclosure; destruction
A. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR
   BIOMETRIC INFORMATION MUST DEVELOP AND MAKE AVAILABLE TO THE PUBLIC A
   WRITTEN POLICY THAT ESTABLISHES A RETENTION SCHEDULE AND GUIDELINES FOR
   PERMANENTLY DESTROYING BIOMETRIC IDENTIFIERS AND BIOMETRIC INFORMATION
   WHEN THE INITIAL PURPOSE FOR COLLECTING OR OBTAINING THE IDENTIFIERS OR
   INFORMATION HAS BEEN SATISFIED OR WITHIN THREE YEARS AFTER THE
   INDIVIDUAL'S LAST INTERACTION WITH THE PRIVATE ENTITY, WHICHEVER OCCURS
   FIRST. UNLESS A COURT OF COMPETENT JURISDICTION HAS ISSUED A VALID
   WARRANT OR SUBPOENA, A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC
   IDENTIFIERS OR BIOMETRIC INFORMATION MUST COMPLY WITH ITS ESTABLISHED
   RETENTION SCHEDULE AND DESTRUCTION GUIDELINES.
B. A PRIVATE ENTITY MAY NOT COLLECT, CAPTURE, PURCHASE, RECEIVE
   THROUGH TRADE OR OTHERWISE OBTAIN A PERSON'S OR A CUSTOMER'S BIOMETRIC
   IDENTIFIER OR BIOMETRIC INFORMATION UNLESS IT FIRST DOES ALL OF THE
   FOLLOWING:
   1. INFORMS THE SUBJECT OR THE SUBJECT'S LEGALLY AUTHORIZED
      REPRESENTATIVE IN WRITING THAT A BIOMETRIC IDENTIFIER OR BIOMETRIC
      INFORMATION IS BEING COLLECTED OR STORED.
   2. INFORMS THE SUBJECT OR THE SUBJECT'S LEGALLY AUTHORIZED
      REPRESENTATIVE IN WRITING OF THE SPECIFIC PURPOSE AND LENGTH OF TERM FOR
      WHICH THE BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION IS BEING
      COLLECTED, STORED AND USED.
   3. RECEIVES A WRITTEN RELEASE THAT IS EXECUTED BY THE SUBJECT OF
      THE BIOMETRIC IDENTIFIERS OR BIOMETRIC INFORMATION OR THE SUBJECT'S
      LEGALLY AUTHORIZED REPRESENTATIVE.
C. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR
   BIOMETRIC INFORMATION MAY NOT SELL, LEASE, TRADE OR OTHERWISE PROFIT FROM
   A PERSON'S BIOMETRIC IDENTIFIER OR BIOMETRIC INFORMATION.
D. A PRIVATE ENTITY IN POSSESSION OF BIOMETRIC IDENTIFIERS OR
   BIOMETRIC INFORMATION MAY NOT DISCLOSE OR OTHERWISE DISSEMINATE A PERSON'S
   OR A CUSTOMER'S BIOMETRIC IDENTIFIER OR BIOMETRIC INFORMATION UNLESS ANY
   OF THE FOLLOWING APPLIES:
   1. THE SUBJECT OF THE BIOMETRIC IDENTIFIERS OR BIOMETRIC
      INFORMATION OR THE SUBJECT'S LEGALLY AUTHORIZED REPRESENTATIVE CONSENTS TO
      THE DISCLOSURE OR DISSEMINATION.
   2. THE DISCLOSURE OR DISSEMINATION COMPLETES A FINANCIAL
      TRANSACTION THAT IS REQUESTED OR AUTHORIZED BY THE SUBJECT OF THE
BIOMETRIC IDENTIFIERS OR THE BIOMETRIC INFORMATION OR THE SUBJECT'S LEGALLY AUTHORIZED REPRESENTATIVE.

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

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

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

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

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

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

A person who is aggrieved by a violation of this chapter may bring an action in the superior court or as a supplemental claim in federal district court against an offending party. For each violation, a prevailing party may recover:

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

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

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

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

18-704. Construction

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

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

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

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