

Attachment #13

An Act Relating to Criminal Procedure – The Rhode Island Biometric Information
Protection Privacy Act (2019, draft)

2019 --

1391

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

AN ACT

RELATING TO CRIMINAL PROCEDURE – THE RHODE ISLAND BIOMETRIC
INFORMATION PROTECTION PRIVACY ACT

Introduced By:

Date Introduced:

Referred To:

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 33

4 THE RHODE ISLAND BIOMETRIC INFORMATION PROTECTION PRIVACY ACT

5 12-33-1. Short title.

6 This act shall be known and cited as "The Rhode Island Biometric Information Protection
7 Privacy Act."

8 12-33-2. Definitions.

9 As used in this chapter:

10 (1) "Biometric identifier" means a biologic, physical, or behavioral characteristic that

1 identifies or enables recognition of an individual, including, but not limited to, retina or iris scan,
2 finger or palm print, voice recognition, gait recognition, vein recognition, identifying DNA
3 (deoxyribonucleic acid) information, or other biologic, physical, or behavioral identifiers when
4 used for identification purposes.

5 Identification purposes include use in a mathematical code or algorithmic model
6 generated by or extracted from measurements of biometric identifiers.

7 (i) The term does not include the following:

8 (A) A written signature, demographic data, physical description, writing sample, or a
9 tattoo description;

10 (B) Donated organ, tissue, blood, serum or plasma stored on behalf of a potential
11 recipient;

12 (C) Information captured from a patient in a health care setting or information collected
13 and used for health care treatment, including an x-ray, MRI, PET scan, mammography or other
14 image of the human anatomy used to diagnose, prognose, or treat an illness or other medical
15 condition or to further validate scientific testing or screening; or

16 (D) A photograph or video, unless the photograph or video is used as a source of a
17 biometric identifier for identification purposes. A photograph or video that is used to aid a person
18 who is blind or otherwise visually impaired is not a biometric identifier for purposes of this
19 chapter.

20 (2) "Collect" means the capture, purchase, or acquisition of a person's biometric
21 identifier.

22 (3) "Identification purposes" means the purpose of recognizing an individual of proving
23 an individual's identity.

24 (4) "Private entity" means any individual, partnership, corporation, limited liability
25 corporation, association, trust, cooperative, or other group of entity however organized. Provided,
26 however, the term does not include state or local governmental agencies, courts or judges.

1 (5) "Retain" means to collect and store a biometric identifier in whatever form for future
2 use as an identifier of an individual.

3 (6) "Security purpose" means the purpose of preventing shoplifting, theft or fraud.

4 (7) "Writing" means a written or electronic communication that is clear and conspicuous
5 in plain, easily understood language.

6 **12-33-3. Collection and retention of biometric identifiers – notification and consent.**

7 (a) Except as provided in subsection (d) of this section, a private entity may not collect,
8 receive, obtain, or use a person's biometric identifier unless the private entity first:

9 (1) Notifies the person in writing:

10 (i) That the person's biometric identifier is being collected and the specific type of
11 biometric identifier that is being collected;

12 (ii) Of the specific purpose for which the biometric identifier will be used; and

13 (iii) Receives affirmative, opt-in consent from the person, in writing, to the collection and
14 use of the person's biometric identifier. Affirmative, opt-in consent may include, but is not limited
15 to, the person's signature or a click in an online checkbox or other electronic signature.

16 (b) Subsection (a) of this section does not require a private entity to obtain a person's
17 consent to collect a biometric identifier from the person if the biometric identifier:

18 (1) Will not be retained but be used only to determine whether the person has provided
19 consent for the collection of the biometric identifier;

20 (2) Is used only for a security purpose; or

21 (3) Is used to validate a bank transaction initiated by the person.

22 (c) Regardless of whether the private entity is required to obtain the person's consent to
23 collect a biometric identifier as provided in subsection (a) of this section, the private entity shall
24 comply with the provisions of this chapter if the private entity sells, transfers, or changes the use
25 of the collected biometric identifier.

26 (d) If a biometric identifier is collected and stored for a security purpose by a person's

1 employer, the purpose for the collection is presumed to expire upon the termination of the
2 person's employment.

3 **12-33-4. Sale and disclosure of biometric identifiers.**

4 (a) A private entity that has collected, received, obtained, or is using a person's biometric
5 identifier, may not disclose, transfer, sell, distribute, or change the purpose of use of a person's
6 biometric identifier unless:

7 (1) The private entity notifies the person in writing that:

8 (i) The person's biometric identifier is being transferred or the purpose of use has
9 changed;

10 (ii) The specific purpose for which the biometric identifier will be used; and

11 (iii) Receives an affirmative opt-in consent of the person in writing;

12 (2) The disclosure completes a financial transaction requested or authorized by the
13 person;

14 (3) The disclosure is required by state or federal law; or

15 (4) The disclosure is required pursuant to a valid warrant or subpoena issued by a court of
16 competent jurisdiction.

17 **12-33-5. Protection and disposal of biometric identifiers.**

18 (a) A private entity that has collected, received, obtained, or is using a person's biometric
19 identifier shall store, transmit, and protect from disclosure the biometric identifier in a manner
20 that is the same as or more protective than the manner in which the private entity stores,
21 transmits, and protects other confidential, sensitive or personally identifying information.

22 (b) Unless prohibited by other law or court order, a private entity in possession of a
23 person's biometric identifier must permanently delete, destroy, or remove the person's biometric
24 identifier when the initial, approved purpose for collecting, or obtaining the identifier is satisfied
25 or fulfilled of the term or duration for the collection and storage of the biometric identifier has
26 ended.

1 **12-33-6. Exemptions.**

2 (a) Sections 12-33-1 through 12-33-5 shall not apply to:

3 (1) Law enforcement purposes when conducted by a government agency, including the
4 identification of perpetrators, missing persons, trafficking victims, or human remains;

5 (2) Facial images used by the department of justice to create driver's licenses or other
6 state identification cards;

7 (3) Purposes authorized and conducted pursuant to state or federal law;

8 (4) The retention of voices for quality assurance purposes;

9 (5) Third-party data storage providers or data transmitters, including Internet service
10 providers or mobile carriers, who provide for the storage or transmittal of data only; or

11 (6) If a person's biometric identifier is captured and stored within the person's own
12 mobile device, computer device, or home security device where biometric identifiers are captured
13 and stored locally within the device and the biometric identifiers do not transmit away from the
14 device using the Internet or other network.

15 **12-33-7. Enforcement - penalty.**

16 Whenever the attorney general has reason to believe that a person or private entity has
17 violated the provisions of this chapter, and that proceeding would be in the public interest, the
18 attorney general may bring an action in the name of the state or on behalf of persons residing in
19 the state, against the person or private entity to restrain and enjoin the use of methods, acts or
20 practices that are in violation of this chapter.

21 **12-33-8. Severability.**

22 If any part of this chapter shall be deemed invalid, all valid parts that are severable shall
23 remain in full force and effect.

24 SECTION 2. This act shall take effect upon passage.

DRAFT

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL PROCEDURE – THE RHODE ISLAND BIOMETRIC
INFORMATION PROTECTION PRIVACY ACT

1 This act would prohibit the collection and retention of biometric identifiers without the
2 consent of the person whose information is being collected. Certain law enforcement purposes
3 would be exempted.

4 This act would take effect upon passage.

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