

SENATE No. 195

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect personal biometric data.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|----------------------------|---|------------------|
| <i>Mark C. Montigny</i> | <i>Second Bristol and Plymouth</i> | |
| <i>Lindsay N. Sabadosa</i> | <i>1st Hampshire</i> | <i>2/3/2023</i> |
| <i>Michael O. Moore</i> | <i>Second Worcester</i> | <i>2/15/2023</i> |
| <i>Rebecca L. Rausch</i> | <i>Norfolk, Worcester and Middlesex</i> | <i>2/23/2023</i> |
| <i>Bruce E. Tarr</i> | <i>First Essex and Middlesex</i> | <i>3/28/2023</i> |
| <i>Patrick M. O'Connor</i> | <i>First Plymouth and Norfolk</i> | <i>10/6/2023</i> |

SENATE No. 195

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 195) of Mark C. Montigny, Lindsay N. Sabadosa, Michael O. Moore and Rebecca L. Rausch for legislation to protect personal biometric data. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 220 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to protect personal biometric data.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2022 Official Edition, are hereby amended by
2 inserting after chapter 93L the following chapter:-

3 Chapter 93M. Biometric Information Privacy Act.

4 Section 1. Definitions.

5 As used in this chapter, the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:

7 "Biometric identifier" means a physiological or biological characteristic that is used by or
8 on behalf of a private entity, singly or in combination, to identify, or assist in identifying, an
9 individual, including, but not limited to a retina or iris scan, fingerprint, voiceprint, pattern of

10 gait or movement, or scan of hand or face geometry. Biometric identifiers do not include writing
11 samples, written signatures, photographs, human biological samples used for valid scientific
12 testing or screening, demographic data, tattoo descriptions, or physical descriptions such as
13 height, weight, hair color, or eye color. Biometric identifiers do not include donated organs or
14 tissues or blood or serum stored on behalf of recipients or potential recipients of living or
15 cadaveric transplants and obtained or stored by a federally designated organ procurement
16 agency. Biometric identifiers do not include information captured from a patient in a health care
17 setting or information collected, used, or stored for health care treatment, payment, or operations
18 under the federal Health Insurance Portability and Accountability Act of 1996. Biometric
19 identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan,
20 mammography, or other image or film of the human anatomy used to diagnose, prognose, or
21 treat an illness or other medical condition or to further validate scientific testing or screening.

22 "Biometric information" means any information, regardless of how it is captured,
23 converted, stored, or shared, based on an individual's biometric identifier used to identify an
24 individual. Biometric information does not include information derived from items or procedures
25 excluded under the definition of biometric identifiers.

26 "Commercial Establishment" means a place of entertainment, a retail store, or a food and
27 drink establishment.

28 "Confidential and sensitive information" means personal information that can be used to
29 uniquely identify an individual or an individual's account or property. Examples of confidential
30 and sensitive information include, but are not limited to, a genetic marker, genetic testing

31 information, a unique identifier number to locate an account or property, an account number, a
32 PIN number, a pass code, a driver's license number, or a social security number.

33 "Private entity" means any individual, partnership, corporation, limited liability company,
34 association, or other group, however organized.

35 "Written consent " means informed written consent.

36 Section 2. Collection, Retention, Destruction, and Disclosure of Biometric Information.

37 (a) A private entity in possession of biometric identifiers or biometric information must
38 develop a written policy, made available to the person from whom biometric information is to be
39 collected or was collected, establishing a retention schedule and guidelines for permanently
40 destroying biometric identifiers and biometric information when the initial purpose for collecting
41 or obtaining such identifiers or information has been satisfied or within 1 year of the individual's
42 last interaction with the private entity, whichever occurs first. Absent a valid order, warrant, or
43 subpoena issued by a court of competent jurisdiction or a local or federal governmental agency, a
44 private entity in possession of biometric identifiers or biometric information must comply with
45 its established retention schedule and destruction guidelines.

46 (b) No private entity may collect, capture, purchase, receive through trade, or otherwise
47 obtain a person's or a customer's biometric identifier or biometric information, unless it first:

48 (1) informs the subject or the subject's legally authorized representative in writing that a
49 biometric identifier or biometric information is being collected or stored;

50 (2) informs the subject or the subject's legally authorized representative in writing of the
51 specific purpose and length of term for which a biometric identifier or biometric information is
52 being collected, stored, and used; and

53 (3) receives written consent executed by the subject of the biometric identifier or
54 biometric information or the subject's legally authorized representative. Written consent may be
55 obtained by electronic means.

56 (c) No private entity in possession of a biometric identifier or biometric information may
57 sell, lease, trade, or otherwise profit from a person's or a customer's biometric identifier or
58 biometric information.

59 (d) No private entity in possession of a biometric identifier or biometric information may
60 disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or
61 biometric information unless:

62 (1) the subject of the biometric identifier or biometric information or the subject's legally
63 authorized representative provides written consent to the disclosure or redisclosure;

64 (2) the disclosure or redisclosure completes a financial transaction requested or
65 authorized by the subject of the biometric identifier or the biometric information or the subject's
66 legally authorized representative;

67 (3) the disclosure or redisclosure is required by state or federal law or municipal
68 ordinance; or

69 (4) the disclosure is required pursuant to a valid warrant or subpoena issued by a court of
70 competent jurisdiction.

71 (e) A private entity in possession of a biometric identifier or biometric information shall:

72 (1) store, transmit, and protect from disclosure all biometric identifiers and biometric
73 information using the reasonable standard of care within the private entity's industry; and

74 (2) store, transmit, and protect from disclosure all biometric identifiers and biometric
75 information in a manner that is the same as or more protective than the manner in which the
76 private entity stores, transmits, and protects other confidential and sensitive information.

77 (f) No commercial establishment shall use a person's or a customer's biometric identifier
78 or biometric information to identify them.

79 Section 3. Right of Action.

80 (a) Any person aggrieved by a violation of this chapter shall have a cause of action
81 pursuant to the procedures set forth in chapter 93A. Damages pursuant to any said action shall
82 be no less than \$5,000 per violation or actual damages suffered, whichever is greater, or up to
83 three but not less than two times such amount if the court finds that the violation was a willful or
84 knowing act. Damages may also include attorneys' fees and costs.

85 (b) The attorney general may bring an action in the name of the commonwealth pursuant
86 to the procedures set forth in chapter 93A upon any violation or suspected violation of this
87 chapter. Damages pursuant to any said action shall be no less than \$5,000 per violation or actual
88 damages suffered, whichever is greater, or up to three but not less than two times such amount if
89 the court finds that the violation was a willful or knowing act.

90 Section 4. Construction.

91 (a) Nothing in this chapter shall be construed to impact the admission or discovery of
92 biometric identifiers and biometric information in any action of any kind in any court, or before
93 any tribunal, board, or agency.

94 (b) Nothing in this chapter shall be construed to conflict with the federal Health Insurance
95 Portability and Accountability Act of 1996 and the rules promulgated under said Act.