

Biometric Technology

Balancing the use of technology to help ensure public safety with the need to protect personal privacy is a concern to all governments, especially since September 11, 2001. Technology to create biometric identifiers and perform facial imaging is at the forefront of the debate. The Biometric Consortium defines biometrics as “automated methods of recognizing a person based on a physiological or behavioral characteristic. Among the features measured are; face, fingerprints, hand geometry, handwriting, iris, retinal, vein, and voice.” California, Connecticut, Georgia, Nebraska, Texas and Virginia are reported to be among the first states that considered legislation on biometrics. Connecticut and Texas are among the first to enact such legislation.

California

Under existing law in California, every application for an original or renewal of a driver’s license or identification card is required to contain, among other things, a legible print of the thumb or finger of the applicant. California Senate Bill 661 (introduced in 2001) would require the state department of motor vehicles to create a biometric identifier from an applicant’s thumbprint or fingerprint and perform a process of authentication in order to ensure that each individual is issued only one driver’s license or identification card. It defines biometric as “a unique digital code created from a thumb point or fingerprint.” The bill imposes various duties on the department with regards to adopting and implementing procedures for restricting access to the biometric information that is collected, maintaining records of requests for access, and posting notices regarding these procedures. It authorizes the department to produce the biometric information pursuant to a court ordered subpoena or summons to and to transmit such biometric information to third parties under certain conditions. The bill also imposes various duties upon such third parties to restrict access to biometric identifiers.

Connecticut

Connecticut enacted several laws between 1995 and 1997 to establish a biometric identifier system (P.A. 95-194, S. 28, 33; 95-351, S. 27, 30; P.A. 96-176, S. 4; June 18 Sp. Sess. P.A. 97-2, S. 23, 165). C.G.S.A. § 17b-30 (Biometric Identifier System) reads:

(a) For purposes of this section, "biometric identifier system" means a system which allows for the recognition of an individual through retinal scanning, finger-imaging, hand geometry or facial recognition. The Commissioner of Social Services and the Commissioner of Motor Vehicles shall examine available biometric identifier systems and to the greatest extent possible, select a system which is compatible with the systems of surrounding states. The Commissioner of Social Services may enter into a memorandum of understanding with the Commissioner of Motor Vehicles for the Department of Motor Vehicles to provide the hardware, software, equipment maintenance, technical training and other resources deemed necessary by the commissioner to establish said system.

(b) At the conclusion or cancellation of the contract entered into pursuant to the memorandum of understanding in subsection (a) of this section, the Commissioner of Social Services may extend the contract for not more than one year, provided, no later than one year after such conclusion or cancellation, the commissioner shall issue a request for proposals for providing the hardware, software, equipment maintenance, technical training and other resources deemed necessary by the commissioner to maintain or improve said system. The subsequent contract for providing the resources for said system shall be awarded pursuant to section 4a-59 and shall begin no later than one year after such conclusion or cancellation.

(c) Said system shall be utilized for office use only in the following programs:

- (1) general assistance;
- (2) temporary family assistance; and

(3) any other program to be determined at the discretion of the Commissioner of Social Services.

(d) A recipient of a program utilizing said system pursuant to subsection (b) of this section shall participate in said system or be subject to disqualification from such program. The commissioner shall have the authority to exempt a recipient from participation in said system.

(e) The implementation of said system shall begin on or before January 1, 1996. The schedule of such implementation shall be determined by the Commissioner of Social Services.

(f) Biometric identifier information obtained pursuant to subsection (d) of this section shall be the proprietary information of the Department of Social Services and shall not be released or made available to any agency or organization and shall not be used for any purpose other than identification or fraud prevention in this or any other state, except that such information may be made available to the office of the Chief State's Attorney if necessary for the prosecution of fraud discovered pursuant to the biometric identifier system established in subsection (a) of this section or in accordance with section 17b-90. The penalty for a violation of this subsection shall be up to a five-thousand-dollar fine or five years' imprisonment or both and the cost of prosecution.

(g) The Commissioner of Social Services shall report to the joint standing committee of the General Assembly having cognizance of matters relating to human services, in accordance with the provisions of section 11-4a, on or before January 1, 1997, and annually thereafter, the following information:

- (1) the number of recipients participating in said system;
- (2) the number of recipients whose benefits have been discontinued due to their failure to participate in said system;
- (3) the cost of implementation and operation of said system;
- (4) the amount of savings attributed to the establishment and operation of said system; and
- (5) the compatibility of said system with biometric systems being utilized in surrounding states.

Nebraska

Nebraska LB924 of 2002 would authorize the state department of motor vehicles to use a biometric identifier, such as a fingerprint, retinal scan, facial mapping, iris imaging, etc., in conjunction with a new digital driver's license scheduled for implementation in 2004.

Pennsylvania

Pennsylvania HB 2416 of 2002 would direct the state department of motor vehicles to establish an identification system and database based on the print of the thumb or finger of an applicant, or some other biometric identification. Under the system, the print shall be cross-referenced with all other fingerprints or other biometric identification data in the database in order to authenticate the print and to ensure that each individual is issued only one driver's license and that an individual is not fraudulently obtaining a driver's license in another individual's name.

Virginia

Virginia SB 62 of 2002 would require the use of thumbprints or other biometric identifiers (as determined by the department of motor vehicles commissioner) in connection with driver's licenses, commercial driver's licenses, and special identification cards. These provisions would only apply to driver's licenses, commercial driver's licenses, special identification cards, and applications issued or submitted on or after January 1, 2003.

Virginia HB 454 of 2002 would create a procedure by which a locality or a law-enforcement agency must apply for an order from a court prior to employing facial recognition technology. In this bill, "facial recognition technology" means any technology or software system that identifies humans by using a

biometric system to identify and analyze a person's facial characteristics and is employed for the purpose of matching a facial image captured by cameras placed in any public place, other than in a state or local correctional facility, with an image stored in a database.

Suggested Legislation

The draft in this SSL Volume is based on Texas HB 678, which became law in 2001. This draft protects the confidentiality of biometric information of an individual by prohibiting the sale, lease, or disclosure of the information. The Act prohibits a person from capturing a biometric identifier of an individual for a commercial purpose without informed consent. This legislation also prohibits a person or governmental body from selling, leasing, or disclosing a biometric identifier unless the individual consents, the disclosure completes a financial transaction requested or authorized by the individual, the disclosure is required or permitted by a federal or state statute, or the disclosure is made for law enforcement purposes. A person or governmental body that stores or transmits biometric identifiers must use reasonable care to keep such information from being disclosed.

Submitted as:
Texas HB 678 (enrolled version)
Status: enacted into law in 2001.

Suggested Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as “An Act Relating to Collecting and Using Biometric
2 Identifiers.”

3
4 Section 2. [*Permitted and Prohibited Uses of Biometric Identifiers.*]

5 (a) In this section, “biometric identifier” means a retina scan or iris scan, fingerprint, voiceprint, or
6 record of hand or face geometry.

7 (b) A person may not capture a biometric identifier of an individual for a commercial purpose unless
8 the person:

- 9 (1) informs the individual before capturing the biometric identifier; and
10 (2) receives the individual's consent to capture the biometric identifier.

11 (c) A person who possesses a biometric identifier of an individual:

- 12 (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
13 (i) the individual consents to the disclosure;
14 (ii) the disclosure completes a financial transaction requested or authorized by the

15 individual;
16 (iii) the disclosure is required or permitted by a federal statute or by another state
17 statute; or

- 18 (iv) the disclosure is made by or to a law enforcement agency for a law enforcement
19 purpose; and

20 (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable
21 care and in a manner that is the same as or more protective than the manner in which the person stores,
22 transmits, and protects the person's other confidential information.

23 (d) A person who violates this section is subject to a civil penalty of not more than [twenty-five
24 thousand (25,000)] dollars for each violation. The [attorney general] may institute an action to recover the
25 civil penalty.

26 (e) A governmental body that possesses a biometric identifier of an individual:

- 27 (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

28 (i) the individual consents to the disclosure;
29 (ii) the disclosure is required or permitted by a federal statute or by another state
30 statute; or
31 (iv) the disclosure is made by or to a law enforcement agency for a law enforcement
32 purpose; and
33 (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable
34 care and in a manner that is the same as or more protective than the manner in which the governmental body
35 stores, transmits, and protects its other confidential information.

36
37 Section 4. [*Exemptions.*] A biometric identifier in the possession of a governmental body is exempt
38 from disclosure under [insert citation].

39
40 Section 5. [*Severability.*] [Insert severability clause.]

41
42 Section 6. [*Repealer.*] [Insert repealer clause.]

43
44 Section 7. [*Effective Date.*] [Insert effective date.]