

## **California Biometric Information Privacy Act Section-by-Section**

### **Section 1. SHORT TITLE.**

This section provides the short title for the proposed bill.

### **Section 2. DEFINITIONS.**

This section includes the definitions of terms that are used throughout the bill.

Many of the terms and their definitions are adapted from model industry standards for facial recognition technology privacy and from pre-existing statutes, namely the Illinois Biometric Information Privacy Act and the Texas Capture or Use of Biometric Identifier. The term “Biometric Information” was adapted from the Illinois Biometric Information Privacy Act because it captured a wide range of biometrics. This bill broadens that definition to future-proof for technological advancements in biometric capabilities. The term “Collection Limitation” constrains private entities by limiting their collection practices to only what is necessary for a given service. The term “Express Affirmative Consent” requires written consent for each specific use of biometric information or data.

This bill covers existing biometric technology. However, the definition has been broadened to capture the potential future capabilities of biometric technology in order for the bill’s language to withstand the test of time.

### **Section 3. SCOPE; EXCEPTIONS.**

This bill covers private entities that capture, use, process, store or transfer biometric information for a commercial purpose.

This bill does not cover private entities whose business is data transfer or storage and who do not provide any products or services specific to biometric information. This includes: mobile phone service providers, Internet service providers, CCTV operators, and data storage providers, who may incidentally store or transfer biometric identifiers or biometric information.

This bill allows limited exceptions for when a private entity may provide stored biometric information to a government entity pursuant to a warrant, after receiving express affirmative consent, emergency—as set out by CalECPA—or a search for a missing person.

### **Section 4. RULES.**

This section orders private entities to provide notice and subsequently obtain express affirmative consent from every individual before it captures, processes, uses, stores, or transfers that individual’s biometric information for a commercial purpose. Private entities must only use biometric information for the purposes for which they have received express affirmative consent.

Private entities can only use biometric information for the purposes for which they have received express affirmative consent.

This section allows individuals to revoke their consent for any type of capture, process, use, storage, or transfer of their biometric information at any time.

This section requires that private entities store all of the biometric information in a reasonably secure manner as outlined in California Civil Code Section 1798.81.5(b).

This section requires that private entities destroy stored biometric information no later than the first anniversary of the date the instrument or document is no longer required to be maintained by law as adapted from Texas Code Ann. Section 503.001.

This section requires that an employer destroy an employee's biometric information on the date the employment is terminated as adapted from Texas Code Ann. Section 503.001.

This section orders private entities to establish a publicly available written policy that lays out the retention and deletion schedules for biometric information.

This section requires private entities to destroy stored copies of biometric information no later than one month after an individual has requested its destruction except as in the specific cases outlined in previous subsections.

This section requires private entities to audit biometric information systems on a yearly basis for collection limitation, accuracy, and bias that may infringe on protected categories of people outlined in California Civil Code Section 51. The California Department of Consumer Affairs must approve the audit tests and associated test datasets before employment. The audits' results must be made publicly available.

This section requires private entities to maintain records, independent tests, or audits of the security, privacy, or performance of biometric identification systems that are currently in the market.

This section provides that private entities that capture and process biometric information for identifying shoplifters in real-time must provide notice but do not need to obtain consent, and the biometric information captured can *only* be used for the purpose of identifying shoplifters. This section specifies that only individuals who have been caught shoplifting as per California Penal Code Section 459.5 may have their information added to databases used only to detect shoplifters.

This section requires that private entities that use biometric information for real-time targeted advertising as a result of biometric identification must adhere to the above stipulations.

This section requires private entities that use biometric information for real-time targeted advertising as a result of biometric characterization provide notice but do not need to obtain

express affirmative consent to capture, process, or transfer biometric information. Private entities cannot store the biometric information without express affirmative consent. Additionally, private entities are prohibited from using real-time targeted advertising based on perceived medical conditions.

This section requires that private entities must provide individuals with a reasonable alternative to using biometric identification for authentication when access to such a system is necessary (e.g., financial records; personal email).

### **Section 5. ENFORCEMENT; PENALTIES.**

This section provides for a private right of action by an individual if that individual has been aggrieved by a private entity's violation of the statute.

This section provides the type of violation, negligent, intentional or reckless conduct, and the limitations on damages the individual can recover depending on the type of violation.

This section provides the option for injunctive relief by state or federal courts.

This section further provides that the attorney general for the State of California may bring an action.

### **Section 6. SEVERABILITY.**

This section provides that if parts of the bill are held to be illegal or otherwise unenforceable, the remainder of the bill should still remain applicable and in effect.

### **Section 7. EFFECTIVE DATE.**

This section provides the precise date when the bill will go into effect.