AMENDMENT TO SENATE BILL 3053

AMENDMENT NO. ______. Amend Senate Bill 3053 by replacing everything after the enacting clause with the following:

"Section 5. The Biometric Information Privacy Act is amended by changing Sections 10, 15, 20, and 25 and by adding Section 35 as follows:

(740 ILCS 14/10)

Sec. 10. Definitions. In this Act:

"Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry that is linked by a private entity to the subject's confidential and sensitive information. Biometric identifiers do not include physical or digital photographs; video recordings; audio recordings; data generated from physical or digital photographs, video recordings, or audio recordings; 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. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials regulated under the Genetic Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996. Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening.

"Biometric information" means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier that is linked by a private entity to the subject's confidential and sensitive information used to identify an individual. Biometric information does not include information derived from items or
procedures excluded under the definition of biometric identifiers.

"Confidential and sensitive information" means personal information that can be used to uniquely identify an individual or an individual's account or property. Examples of confidential and sensitive information include, but are not limited to, a genetic marker, genetic testing information, a unique identifier number to locate an account or property, an account number, a PIN number, a pass code, a driver's license number, or a social security number.

"Private entity" means any individual, partnership, corporation, limited liability company, association, or other group, however organized. A private entity does not include a State or local government agency. A private entity does not include any court of Illinois, a clerk of the court, or a judge or justice thereof.

"Written release" means informed written consent or, in the context of employment, a release executed by an employee as a condition of employment.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/15)

Sec. 15. Retention; collection; disclosure; destruction.

(a) A private entity in possession of biometric identifiers or biometric information **for more than 24 hours** must develop a written policy, made available to the public, establishing a
retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession of biometric identifiers or biometric information must comply with its established retention schedule and destruction guidelines.

(b) No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information and retain it for more than 24 hours, unless it first:

(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 a biometric identifier or biometric information is being collected, stored, and used; and

(3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative.
(c) No private entity in possession of a biometric identifier or biometric information may sell, lease, trade, or exchange for financial consideration profit from a person's or a customer's biometric identifier or biometric information.

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

(1) the subject of the biometric identifier or biometric information or the subject's legally authorized representative consents to the disclosure or redisclosure;

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

(3) the disclosure or redisclosure is required by State or federal law or municipal ordinance; or

(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 a biometric identifier or biometric information shall:

(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; and

(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.

(f) It is not unlawful under this Act for any user to
collect, capture, otherwise obtain, or possess a biometric
identifier or biometric information on a personal device,
unless the biometric identifier or biometric information is
used for the purpose of committing a criminal or tortious act.

It is not unlawful under this Act for a private entity to
create or make available a device, software, or other
functionality that collects, captures, otherwise obtains, or
possesses biometric identifiers or biometric information on a
personal device. It is not unlawful under this Act for a cloud
service provider to take any action at the direction of or on
behalf of a user of the cloud service.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/20)

Sec. 20. Right of action. Any person aggrieved by a
violation of this Act that occurs in this State shall have a
right of action in a State circuit court or as a supplemental
claim in federal district court against an offending party. A
prevailing party may recover for each violation:

(1) against a private entity that negligently violates
a provision of this Act, liquidated damages of $1,000 or
actual damages, whichever is greater;

(2) against a private entity that intentionally or
recklessly violates a provision of this Act, liquidated
damages of $5,000 or actual damages, whichever is greater;

(3) reasonable attorneys' fees and costs, including
expert witness fees and other litigation expenses; and

(4) other relief, including an injunction, as the State
or federal court may deem appropriate.

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/25)

Sec. 25. Construction.

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

(b) Nothing in this Act shall be deemed to apply in any
manner to a private entity that complies construed to conflict
with the X-Ray Retention Act, the federal Health Insurance
Portability and Accountability Act of 1996 as amended by the
Health Information Technology for Economic and Clinical Health
Act of 2009, the Personal Information Protection Act, and the
rules promulgated under those Acts either Act.
(c) Nothing in this Act shall be deemed to apply in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder.

(d) Nothing in this Act shall be construed to conflict with the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 and the rules promulgated thereunder.

(e) Nothing in this Act shall be construed to 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.

(f) Nothing in this Act shall be deemed to apply to a private entity collecting, storing, or transmitting biometric information if:

   (1) the biometric information is used exclusively for:

      (A) employment, human resources, compliance, identification, or authentication purposes;

      (B) preventing or investigating acts of terrorism, human trafficking, kidnapping, or violence; or

      (C) safety, security, or fraud prevention purposes;

   (2) the private entity does not sell, lease, or trade the biometric identifier or biometric information collected; and
(3) the private entity documents a process and time frame to delete any biometric information used for the purposes identified in paragraph (1).

(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/35 new)

Sec. 35. Department of Labor website. The Illinois Department of Labor shall provide on its website information for employers regarding the requirements of this Act.".