A bill to be entitled
An act relating to biometric information privacy;
creating s. 501.172, F.S.; providing a short title;
providing definitions; establishing requirements and
restrictions on private entities as to the use,
collection, and maintenance of biometric identifiers
and biometric information; creating a private cause of
action for relief for violations of the act; providing
for construction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 501.172, Florida Statutes, is created
to read:

501.172  Biometric information privacy.—
(1) SHORT TITLE.—This section may be cited as the "Florida
Biometric Information Privacy Act."
(2) DEFINITIONS.—As used in this section, the term:
(a) "Biometric identifier" means a retina or iris scan,
fingerprint, voice print, or scan of hand or face geometry. The
term does not include any of the following:
1. 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.
2. Donated organs, tissues, parts, or blood or serum that is stored on behalf of recipients, or potential recipients, of living or cadaveric transplants and that are obtained by or stored by a federally designated organ procurement organization.

3. 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.

4. 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.

(b) “Biometric information” means any information, regardless of the manner in which it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual. The term does not include information derived from items or procedures excluded from the definition of biometric identifiers as specified in paragraph (a).

(c) “Confidential and sensitive information” means personal information that can be used to uniquely identify an individual or an individual's account or property which includes, but is 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 license number, a Florida identification card
number, or a social security number.

(d) "Private entity" means any individual, partnership,
corporation, limited liability company, association, or other
group. The term does not include a state or local governmental
agency or any state court, a clerk of the court, or a judge or
justice thereof.

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

(3) REQUIREMENTS OF PRIVATE ENTITIES.—

(a) A private entity that is in possession of biometric
identifiers or biometric information shall develop a publicly
available written policy establishing a retention schedule and
guidelines for permanently destroying biometric identifiers and
biometric information upon satisfaction of the initial purpose
for collecting or obtaining such identifiers or information or
within 3 years after 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) A private entity may not collect, capture, purchase,
receive through trade, or otherwise obtain a person's or a
customer's biometric identifier or biometric information unless
the private entity:

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) A private entity in possession of a biometric
identifier or biometric information may not sell, lease, trade,
or otherwise profit from a person's or a customer's biometric
identifier or biometric information.

(d) A private entity in possession of a biometric
identifier or biometric information may not disclose 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;

2. The disclosure 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 is required by state or federal law or
local 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 store, transmit, and
protect from disclosure all biometric identifiers and biometric
information:

1. Using the reasonable standard of care within the
private entity's industry; and

2. 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.

(4) CAUSE OF ACTION.—Any person aggrieved by a violation
of this section has a cause of action in circuit court against
an offending party. A prevailing party may recover for each
violation:

(a) Liquidated damages of $1,000 or actual damages,
whichever amount is greater, against a private entity that
negligently violates any provision in subsection (3).

(b) Liquidated damages of $5,000 or actual damages,
whichever amount is greater, against a private entity that
intentionally or recklessly violates any provision in subsection (3).

(c) Reasonable attorney fees.
(d) Other relief, including an injunction, as the court deems appropriate.

(5) CONSTRUCTION.—This section may not be construed to:

(a) 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) Conflict with the federal Health Insurance Portability and Accountability Act of 1996 and any regulations promulgated pursuant to that act;

(c) 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; or

(d) Apply 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 any regulations promulgated pursuant to that act.

Section 2. This act shall take effect October 1, 2019.