

## **Re: Local Law Requiring Disclosure of Biometric Identification Technology at Retail Establishments**

Honorable Legislators,

I am submitting for your consideration a proposed local law requiring commercial establishments operating within Monroe County to provide clear and conspicuous notice when they collect, retain, store, use, or share biometric identifier information of customers.

As biometric identification technologies — including facial recognition systems — become more widely deployed in retail environments, public awareness of their use has lagged behind their implementation. In many cases, customers learn that biometric systems are operating only because disclosure is required by law in other jurisdictions. In the absence of clear, in-store notice, individuals have no meaningful opportunity to understand when uniquely sensitive personal information is being collected.

Biometric identifier information differs from other forms of consumer data. It is derived from a person's physical or biological characteristics and may be difficult or impossible to replace if compromised. Unlike a password or credit card number, biometric data is immutable. For that reason, even where such technology is used for legitimate purposes such as fraud prevention or asset protection, transparency and notice are essential.

This proposed legislation does not prohibit the use of biometric technology. Rather, it requires that commercial establishments clearly disclose its use at points of entry, ensuring that customers are informed before engaging in commerce. The measure also prohibits the sale of biometric identifier information and establishes a structured enforcement and cure process.

The goal of this proposal is straightforward: to align technological deployment with basic consumer transparency standards. As biometric technologies expand beyond limited contexts into everyday retail environments, it is appropriate for local governments to ensure that residents are not unknowingly subjected to systems that collect uniquely sensitive information.

This proposal has no impact on the Monroe County budget.

Respectfully submitted,

Rachel Barnhart

## **LOCAL LAW REQUIRING DISCLOSURE OF BIOMETRIC IDENTIFICATION TECHNOLOGY AT RETAIL ESTABLISHMENTS**

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

**Section 1: Purpose.** The County of Monroe recognizes that the use of biometric identifier technologies by commercial establishments is expanding. Because biometric identifier information is based on a person's physical or biological characteristics and may be difficult or impossible to replace if compromised, it warrants heightened transparency. The County therefore finds it in the public interest to require clear notice to customers when such information is collected or used.

### **Section 2. Definitions.**

#### **BIOMETRIC IDENTIFIER INFORMATION**

A physiological or biological characteristic that is used by or on behalf of a commercial establishment, singly or in combination, to identify, or assist in identifying, an individual, including but not limited to: (i) a retina or iris scan, (ii) a fingerprint or voiceprint, (iii) a scan of a hand or face geometry, or (iv) any other identifying characteristic.

#### **COMMERCIAL ESTABLISHMENTS**

Any person, firm, partnership, association, corporation, company, organization, or other entity that operates a place of business within Monroe County and offers goods or services to the public, whether for profit or not for profit.

#### **CUSTOMER**

Any purchaser or prospective purchaser of goods or services from a commercial establishment.

#### **FINANCIAL INSTITUTION**

A bank, trust company, national bank, savings bank, federal mutual savings bank, savings and loan association, federal savings and loan association, federal mutual savings and loan association, credit union, federal credit union, branch of a foreign banking corporation, public pension fund, retirement system, securities broker, securities dealer or firm, but does not include a commercial establishment whose primary business is the retail sale of goods and services to customers and provides financial services such as the issuance of credit cards or in-store financing to customers.

### **Section 3. Disclosure Requirement.**

Any commercial establishment that collects, retains, converts, stores, uses, or shares biometric identifier information of customers must disclose such collection, retention, conversion, storage,

use, or sharing, as applicable, by placing a clear and conspicuous sign disclosing such usage near all entrances to the commercial establishment.

#### **Section 4. Prohibition on Sale of Biometric Identifier Information.**

It shall be unlawful to sell, lease, trade, share in exchange for anything of value or otherwise profit from the transaction of biometric identifier information.

#### **Section 5. Private right of action**

- A. Any person aggrieved by a violation of this chapter may bring an action in a court of competent jurisdiction against a commercial establishment that violates its provisions.
- B. At least thirty (30) days prior to commencing an action for a violation of Sections 3 of this Local Law, the aggrieved person shall provide written notice to the commercial establishment specifying the alleged violation. If, within thirty (30) days of receiving such notice, the commercial establishment cures the violation and provides the aggrieved person with a written statement confirming that the violation has been cured and will not recur, no action may be brought for that violation.
- C. No prior written notice shall be required for an action alleging the unlawful sale or exchange of biometric identifier information.
- D. A prevailing plaintiff may recover:
  - (1) Statutory damages of not less than \$500 and not more than \$1,000 per violation;
  - (2) Actual damages, where greater;
  - (3) Reasonable attorneys' fees and costs; and
  - (4) Such other relief as the court deems appropriate, including injunctive relief.

#### **Section 6. Applicability**

- A. Nothing in this chapter shall apply to the collection, storage, sharing or use of biometric identifier information by government agencies, employees or agents.
- B. The disclosure required by Section 3 shall not apply to financial institutions.
- C. Biometric identifier information collected through photographs or video recordings, if: the images or videos collected are not analyzed by software or applications that identify, or that assist with the identification of, individuals based on physiological or biological characteristics, and the images or video are not shared with, sold or leased to third parties other than law enforcement agencies.

#### **Section 7. Preemption**

This chapter shall be null and void on the day statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, unless state law specifically exempts from preemption earlier enacted local laws in this area. The County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions in this section.

**Section 8. Effective Date.**

This chapter shall take effect in accordance with the provisions of the **Municipal Home Rule Law** and the Monroe County Charter.

Local Law No. \_\_\_\_\_

ADOPTION: Date: \_\_\_\_\_ Vote: \_\_\_\_\_

**ACTION BY THE COUNTY EXECUTIVE**

APPROVED: \_\_\_\_\_ VETOED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_