

January 31, 2022

The Honorable Delores Kelley
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 335 - Biometric Identifiers Privacy Position: Unfavorable

Chair Kelley:

The Alliance for Automotive Innovation (Auto Innovators) is writing to inform you of **our opposition to SB 335**, which will negatively impact important safety-related vehicle technologies. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents automakers producing nearly 99 percent of cars and light trucks sold in the U.S., major Tier 1 suppliers, as well as other automotive technology companies.

Maintaining Consumer Privacy and Cybersecurity

The protection of consumer personal information is a priority for the automotive industry. Through the development of the “Consumer Privacy Protection Principles for Vehicle Technologies and Services,” Auto Innovators’ members committed to take steps to protect the personal data generated by their vehicles. These Privacy Principles are enforceable by the Federal Trade Commission and provide heightened protection for certain types of sensitive data, including biometric data.¹ Consumer trust is essential to the success of vehicle technologies and services. Auto Innovators and our members understand that consumers want to know how these vehicle technologies and services can deliver benefits to them while respecting their privacy. Our members are committed to providing all their customers with a high level of protection of their personal data and maintaining their trust.

Practical Concerns

We have concerns about this legislation and recommend an unfavorable report from the committee. Our concerns are outlined below:

First, privacy requirements of this nature require a standardized, nationwide approach so there is not a dizzying array of varied state requirements. Privacy protections regarding biometrics are being enforced by the Federal Trade Commission (FTC). The FTC has been the chief regulator for privacy and data security for decades, and its approach has been to use its authority under Section 5 of the FTC Act to encourage companies to implement strong privacy and data security

¹ The complete Principles document can be found at www.automotiveprivacy.com

practices. The auto industries "Privacy Principles" are enforceable under Section 5 of the FTC Act.

Second, the current definition of "biometric identifier" is extremely broad and could capture several important safety-related technologies that are not used or intended to be used for the unique personal identification of an individual. For example, external-facing vehicle sensors that are integral to an Advanced Driver Assistance Systems or automated driving systems may be used to recognize that an object in the path of the vehicle is a pedestrian. In addition, internal-facing cameras may be used on some lower-level automated vehicle systems to detect driver misuse or disengagement. While these "images" are not used by an auto company to identify individuals, they are potentially captured by the definition of "biometric identifier."

This issue could be remedied by modifying the definition of "biometric identifier" so that it explicitly excludes images obtained by vehicle safety technologies. It could also be remedied by striking the references to "biometric identifiers" throughout and limiting the applicability of these provisions to "biometric information." Since "biometric information" is defined as information that is used to identify an individual (as opposed to information that can be used to identify an individual), it would presumably exclude the images captured by these vehicle safety technologies.

Third, while the requirement to have a written policy that lays out a retention schedule conforms with the industry's existing Privacy Principles, the requirement to destroy the information no later than one year after the company's last interaction seems somewhat arbitrary. A requirement to provide clear disclosure to consumers about how long such information will be maintained should be sufficient. Moreover, in practice, this requirement may prove challenging because, in the automotive case, manufacturers do not generally have visibility into who is driving or using a particular vehicle at a particular time and using vehicle technologies that may utilize biometric technology. In addition, manufacturers may not always know when a vehicle has been sold to another owner.

Finally, the bill creates a private right of action. Businesses may very well find themselves in a position of facing severe penalties for even very minor and inadvertent infractions and where there are no actual damages.

Thank you for your consideration of the Auto Innovators' position. For more information, please contact our local representative, Bill Kress, at (410) 375-8548.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Fisher". The signature is fluid and cursive, with the first name "Josh" and last name "Fisher" clearly distinguishable.

Josh Fisher
Director, State Affairs