



**LEGISLATIVE POSITION:**

**Unfavorable**

**Senate Bill 335**

**Commercial Law – Consumer Protection – Biometric Identifiers Privacy**

**Senate Finance Committee**

**Wednesday, February 9, 2022**

Dear Chairwoman Kelley and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Maryland Chamber of Commerce members place a high priority on consumer privacy, however, as drafted, SB 335 would create significant hardships for Maryland employers and could result in stifling important advances in safety and security.

Chamber members believe that privacy laws should provide strong safeguards for consumers, while allowing the industry to continue to innovate. However, SB 335 adopts language from an Illinois law passed in 2008 that would further burden local businesses with the threat of frivolous class action litigation. As has been demonstrated in Illinois, the threat of liability will prevent Maryland companies from developing or utilizing pro-consumer, pro-privacy uses of biometric data like building security, user authentication, and fraud prevention.

In addition to the private right of action outlined in SB 335, Chamber members remain concerned about the impacts on the use of biometric technology for security, identification and authentication purposes to help prevent and detect fraud. Concerns include:

- The retention policy outlined in the bill is mandating the destruction of biometrics that are fundamental to businesses preventing fraud and keeping their customers safe. This hampers a businesses ability to identify bad actors potentially increasing the amount of fraudulent activity.
- The language in the bill leaves open the possibility that a private company would be forced to make the mandated written policy public. This would mean making

public the protocols and methods used to combat fraud and ensure security, which is the information of most interest to bad actors.

- The bill sets forth a right to know policy for sensitive information but does not include an ability for the private entity to engage in appropriate and commercially reasonable authentication of the individual making the request (which could result in biometric information being disclosed to bad actors).
- The “do not sell” provision seems to prevent an entity from being able to profit from biometric identifiers beyond a direct sell or trade of the information. The language could be taken to prevent the use of biometric information for security, research and product development. Would the use of biometrics to improve a network security product constitute profiting off the biometrics? Deleting the “or otherwise profit” portion of 14-4404 may take care of this issue.
- The limitation that a private entity cannot condition a service on the collection and use of biometrics unless it is strictly necessary for the service undermines the use of biometrics in fraud prevention and security. Again, this will serve bad actors and could incentivize unlawful behavior.

Maryland residents and employers deserve privacy protections that safeguard sensitive data while promoting innovation and job creation. The Maryland Chamber of Commerce continues to urge the bill sponsors to work alongside industry partners in addressing the issues surrounding the safety and security of personal data.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on SB 335.

