



January 25, 2021

The Honorable Dereck E. Davis
Chair, House Economic Matters Committee
Room 231
House Office Building
Annapolis, Maryland 21401

RE: HB 218 - Biometric Identifiers and Biometric Information Privacy
Position: Unfavorable

Chair Davis:

The Alliance for Automotive Innovation¹ (Auto Innovators) is writing to inform you of **our opposition to HB 218**, which establishes requirements & restrictions on private entities use, collection, & maintenance of biometric identifiers & biometric information.

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.² 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.

¹ Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website <http://www.autosinnovate.org>.

² https://autoalliance.org/wp-content/uploads/2017/01/Consumer_Privacy_Principlesfor_VehicleTechnologies_Services.pdf

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)ⁱ. 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 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 abuse or disengagement. While these “images” are not used by an auto company to identify individuals, they could theoretically be used by someone for this purpose and are therefore 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 14-4302 and 14-4303 and limiting the applicability of these provisions to “biometric information.” Since “biometric information” is defined as information that is used 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 ~~is~~ conforms with the industry’s existing Privacy Principles, the requirement to destroy the information no later than three years 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.

Fourth, 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. Please do not hesitate to contact me at jfisher@autosinnovate.org or 202-326-5562, should I be able to provide any additional information.

Sincerely,

Josh Fisher

Josh Fisher
Director, State Affairs

ⁱ <https://www.ftc.gov/news-events/press-releases/2021/01/california-company-settles-ftc-allegations-it-deceived-consumers>

