



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

**HB 33 – Commercial Law – Consumer Protection
– Biometric Data Privacy**

Chair Wilson, Vice Chair Crosby, Members of Economic Matters –

HB 33 will put in place guardrails for our biometric identifiers. Biometric identifiers are things like fingerprints, retina or iris scans or scans of our hand or face geometry. Currently, companies can collect our biometric identifiers without our knowledge or consent and there are no rules regarding how long they can keep them or what they can do with them. To be clear, this bill does not ban the use of biometric identifiers. It simply puts in guardrails regarding their collection and use.

In short, the bill would: 1) Provide that an entity may not collect, use, disclose, or otherwise disseminate an individual's biometric data unless they get consent. And there are exceptions, including for fraud & security. 2) Require that an entity that collects biometric data must keep it secure and must have a retention & deletion policy. 3) Prevent an entity from profiting off our unique identifiers by ensuring an entity may not sell, lease, or trade an individual's biometric data. 4) Allows individuals the ability to find out what data of theirs is being collected and how it is being used. The provisions would be enforced by the Attorney General, except when an entity sells our private information, in which case an individual could sue.

After tremendous work and taking extensive comments by the business and tech community, this Committee passed the bill in this form last year. It passed the full House on a bi-partisan basis but stalled in the Senate.

Background Information

Collecting biometric identifiers is an area of exploding technological advances and many, many businesses use this technology. Here are a few examples:

- In December 2022, a woman who went to see a show with her daughter and her Girl Scout Troop at Radio City Music Hall was kicked out when facial recognition identified her as a lawyer in the same firm that represents someone suing a restaurant that is owned by the same company that owns Radio City.¹

¹ <https://www.nbcnews.com/news/us-news/girl-scout-mom-kicked-radio-city-barred-seeing-rockettes-facial-recogn-rcna62606>

- Employers are using facial recognition software to determine whether an employee is working or not. If the employee goes to the bathroom, they are kicked out.²
- Car manufacturers are looking into using facial recognition as a way to determine who is driving a car, or who is walking up to the car;³
- Apple uses fingerprint scans for unlocking our phones. Their FaceID program allows someone to not only unlock their phone, but also to log into their online banking account.
- TSA is using facial recognition at airports as a method of screening people in addition to their identification.⁴

There are myriad concerns with the collection of our biometric identifiers. First, is the privacy concern. These are unique, physical identifiers for individuals, ones that cannot be changed like a password. Companies should not be able to collect them without individual's knowledge and consent. Second, is the security concern. Once these identifiers are gone, there is no getting them back. They are not like passwords that can be changed. And they are getting out:

- PayByTouch had 3.7 million fingerprints and when they went bankrupt, those fingerprints – linked to financial accounts – were considered assets that could be sold.⁵
- In 2015, hackers stole 5.6 million fingerprints from the federal government.⁶
- Just a few months ago, in December 2022, a researcher bought a device on Ebay for \$68. Much to his surprise, that device held the names, nationalities, photographs, fingerprints, and iris scans of 2,632 people.⁷

In addition, there is the problem of bias in some of the technology. Facial recognition technology is well-known to be less reliable for persons of color than white people.⁸

- Employees of color whose companies use facial recognition to monitor their activity are kicked out of the system more than their white colleagues.
- A 14-year old was kicked out of a skating rink, even though she had never been there, because the facial recognition system matched her to someone else.⁹
- Apple wrongly accused a black teenager of shoplifting in New York, in part based on facial recognition.¹⁰
- Rite Aid installed more cameras in areas that were less wealthy and less white.¹¹

² <https://www.washingtonpost.com/technology/2021/11/11/lawyer-facial-recognition-monitoring/>;
<https://www.washingtonpost.com/technology/2021/09/24/remote-work-from-home-surveillance/>

³ <https://www.cbinsights.com/research/facial-recognition-technology-us-corporations/>

⁴ <https://www.washingtonpost.com/technology/2022/12/02/tsa-security-face-recognition/>

⁵ <https://trustarc.com/blog/2008/04/02/truste-recommends-destruction-of-more-than-37-million-fingerprint-records/>

⁶ <https://money.cnn.com/2015/09/23/technology/opm-fingerprint-hack/index.html?iid=EL>

⁷ <https://www.nytimes.com/2022/12/27/technology/for-sale-on-ebay-a-military-database-of-fingerprints-and-iris-scans.html>

⁸ <https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/>

⁹ <https://www.fox2detroit.com/news/teen-kicked-out-of-skating-rink-after-facial-recognition-camera-misidentified-her>

¹⁰ https://www.theregister.com/2021/05/29/apple_sis_lawsuit/

¹¹ <https://www.reuters.com/investigates/special-report/usa-riteaid-software/>

Even Facebook has recognized the problems with unfettered facial recognition. In late 2021, Facebook “surprised the world with news that it was shuttering the program and deleting the faces of more than a billion users from its databases, citing public “concern” over an unregulated technology.”¹²

Many states are taking up biometric privacy this year, and it is not a partisan issue, as Democrats from Massachusetts to Republicans in Montana seek to protect these unique identifiers.

I respectfully request a favorable report on HB 33.

¹² https://www.washingtonpost.com/technology/2021/11/05/facebook-facial-recognition/?utm_source=alert&utm_medium=email&utm_campaign=wp_news_alert_revere&location=alert&wpmk=1&wpisrc=al_technology__alert-tech&pwapi_token=eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJjb29raWVudWV1Ijoid3BfY3J0aWQiLCJpc3MiOiJkYXJ0YSIsImNvb2tpZXZhbHVlIjoibWVudWV1IiwiaWF0IjoiMj02MS01MS0wMCJ9