



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 169

Commercial Law – Consumer Protection – Biometric Data Privacy

Senate Finance Committee

Wednesday, February 8, 2022

Dear Chairwoman Griffith 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 6,400 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 169 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 169 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 contained in SB 169, Maryland businesses remain concerned about the impacts this legislation could have on the use of biometric technology for security, identification, and authentication purposes to prevent and detect fraud. Concerns include:

- The retention policy outlined in SB 168 mandates the destruction of biometrics that are fundamental to businesses preventing fraud and keeping their customers safe. This hampers a business' 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, methods and information 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 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.
- Recently enacted security laws in California, Colorado, and Virginia all provide a two-year delay in enforcement. SB 169 goes into effect on October 1, 2023. This tight turnaround presents real challenges for compliance, particularly as SB 169 requires sweeping changes to how businesses manage biometric data.

Maryland residents and employers deserve privacy protections that safeguard sensitive data while promoting innovation and job creation. The Maryland Chamber of Commerce is committed to working alongside the bill sponsors and impacted partners to address 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 169**.

