



**Testimony of  
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CTIA**

**In Opposition to Maryland SB 169**

**Before the Maryland Senate Finance Committee**

**February 8, 2023**

Chair, Vice-Chair, and members of the committee, on behalf of CTIA®, the trade association for the wireless communications industry, I submit this testimony in opposition to SB 169. This bill places businesses under a strong threat of litigation and is not reflective of the current online ecosystem.

SB 169 is modeled after a biometric privacy law in Illinois, enacted in 2008, which has led to myriad lawsuits and little consumer protection. Maryland should not replicate this problematic law. The private right of action contained in SB 169 would subject companies to the risk of expensive litigation that primarily benefits the plaintiffs' bar and offers little relief to consumers. This has shown true in Illinois, where at the end of 2019, nearly 300 lawsuits were filed regarding their law – almost four times the total for 2018, the previous high watermark. Through September of 2021, according to a search of court filings, plaintiffs' lawyers have filed over 900 cases alleging violations under the BIPA law in Illinois.<sup>1</sup>

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<sup>1</sup> <https://institutelegalreform.com/research/ilr-briefly-a-bad-match-illinois-and-the-biometric-information-privacy-act/>



These lawsuits have targeted businesses both large and small for alleged technical violations linked to collecting, using, and sharing biometric identifiers, like those indicated in SB 169. Rather than protecting consumers, however, these lawsuits have stifled beneficial uses of biometric data, and this legislation would do the same.

Furthermore, the written consent requirement does not reflect the current online ecosystem and is unworkable from a practical sense. This bill would have the negative effect of precluding protection for some consumers such as disabled populations, the elderly, and others, as they would be disadvantaged because they would be unable to use their voice to consent to services that protect themselves and others from cyber threats. This could also impact the use of voice recognition services such as those used in automobiles that help avoid distracted driving.

The right to access biometric information contained in the bill could also expose Maryland consumers to security risks, particularly by allowing a consumer's representative to make a request on her behalf. This creates the risk that biometric identifiers and other sensitive information could land in the hands of bad actors posing as consumers exercising their rights under the law or victims of domestic abuse.

Moreover, for over 20 years, the Federal Trade Commission has developed and enforced an effective privacy framework that applies to all players in the internet ecosystem. The FTC is an active consumer privacy enforcer. It has brought over 500 enforcement actions protecting consumer privacy. Through these enforcement actions, as well as through



extensive policy guidance, the FTC has articulated a consumer privacy framework in which more sensitive personal information including biometric or genetic information, is generally subject to heightened protections, while there is greater flexibility to collect, use, and disclose non-sensitive information. In addition, the Maryland Attorney General already has the authority to address unfair or deceptive acts or practices relating to consumer privacy under state consumer protection laws. Because of these existing federal and state measures, and other privacy laws, biometric data is already protected.

This bill raises complex issues and replicating an outdated and litigious statute, which was passed over a decade ago and has not been enacted in any other state, is not a path that Maryland should follow. As stated, passage of this legislation would expose consumers to new privacy and security risks and open up businesses to the threat of litigation, which would act as a damper on innovation, ultimately harming consumers in Maryland. Accordingly, CTIA respectfully requests that you not move this legislation. Thank you for your consideration.