

Maryland SB 335

Opposition to SB 335 and the overregulation of biometric technology

February 9, 2022

Chair Kelley, Vice Chair Feldman, and members of the Finance Committee:

We ask you **to not advance SB 335** because it will deny Marylanders the benefits of many emerging services. While privacy is a concern for many Marylanders, the unintended consequences of this legislation could put Maryland and Marylanders at a real disadvantage.

While biometrics may seem like an exotic or scary term, many of us are using biometric technologies every day in ways that make our lives easier and more secure. This includes using facial recognition technology to identify friends and family in Shutterfly albums, and Nest doorbells that can provide a sense of security in seeing what is happening outside our homes. In addition, voice authentication offered by anti-fraud companies like Pindrop is used routinely in call centers to help keep fraudsters and scammers from stealing Marylanders' personal information.

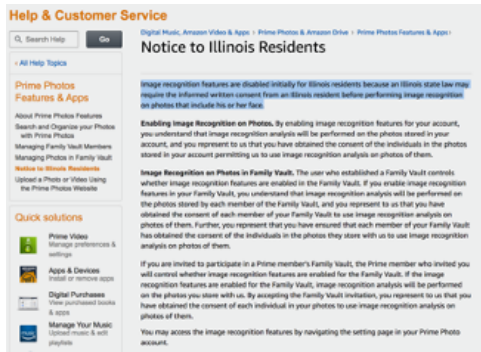
More evolving technologies that make our lives easier and safer using biometrics are increasingly available. Pindrop is developing voice authentication solutions that will enable Marylanders to securely access their accounts with just their own voice, avoiding the need to remember long passwords or master use of a password manager.

But SB 335 would make these uses of biometric technology that clearly benefit consumers much more difficult for Marylanders to access *when Marylanders freely choose to use them*.

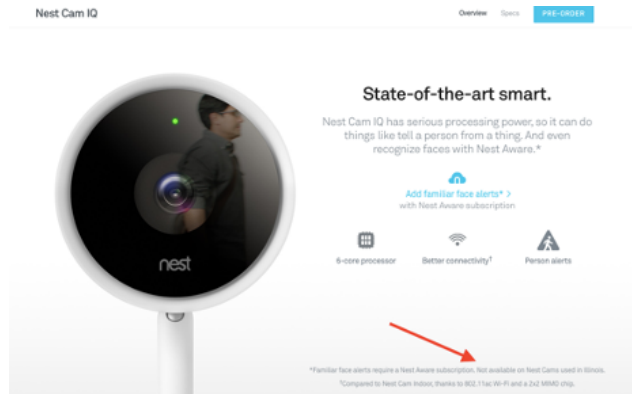
But SB 335 could curtail these beneficial uses of biometric technology.

The real consequences of overregulation of biometric technology can be readily seen in Illinois today. The Illinois's Biometric Information Privacy Act (BIPA) has enabled astounding lawsuits against Shutterfly, Amazon, Google, Apple, Six Flags, and nursing homes. Illinois voters have lost out on the ability to use tech innovations such as Google Art Selfie Match that allowed residents to find their fine art lookalike.

As the images below show BIPA's restrictions and the risks of litigation have resulted in Amazon Photos disabling facial recognition to sort photos a user has uploaded, prevented Nest from offering security matching for friends and family, and stopped an innovative ordering solution at local restaurants that would have allowed customer to place their favorite order with just their face.



Because of BIPA, Amazon Photos does not allow searching photos by face for Illinois residents



Because of BIPA, Nest does not allow Illinois residents the ability to identify friends and family members



Because of BIPA, restaurant kiosks allowing quick reorder of meals at Wao Bao via customer recognition are no longer available in Illinois

In many of these cases, there was not a definable harm that occurred, but the mere existence of a violation was sufficient for class-action litigation. As a result, such bills are not “pro-consumer” or even “pro-privacy,” but better understood as “pro-lawsuit”.

Longer term, this legislation may prevent new secure biometric benefits from being available to Maryland residents.

When it comes to concerns about privacy, a variety of state and federal laws already address many of the concerns that animate this legislation. These include the Children’s Online Privacy Protection Act (COPPA), the Electronic Communications Privacy Act (ECPA), industry specific regulations in healthcare, banking, and education, and the state’s own data breach law. In the case of concerns such as data breaches of sensitive information, existing laws already empower the Maryland Attorney General to bring cases to protect consumers.

In addition to these specific national laws, the Federal Trade Commission (FTC) actively enforces against privacy and security issues across the country, including those involving biometric information.

Under its Section 5 authority regarding “unfair or deceptive practices, the FTC is using an adjustable enforcement approach that evolves with technology and industry best practices. This framework is the ideal way to address concerns related to technologies with a wide-range of applications like the biometrics and has proven an effective way to ensure companies implement strong data security and privacy protections without stifling innovation.

We appreciate your consideration and ask that you not advance SB 335. We welcome the opportunity to work with this committee more as it considers the ideal approach to privacy for the citizens of Maryland.

Thank you again for the opportunity to testify.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.