



STATE PRIVACY AND SECURITY COALITION



February 22, 2017

Chair Alan Doane
House Committee on Judiciary
Montana House of Representatives
Helena, Montana 59620

Re: HB 518, The Montana Biometric Information Privacy Act

Dear Chair Doane:

The undersigned associations represent hundreds of the country's leading technology companies in high-tech manufacturing, computer networking, and information technology, clean energy, life sciences, Internet media, ecommerce, education, and sharing economy sectors. Our member companies are committed to advancing public policies and private sector initiatives that make the U.S. the most innovative country in the world.

While we support privacy protections, our members oppose HB 518, the Montana Biometric Information Privacy Act. It would Montana residents and businesses at much greater risk of fraud, as well as open the door to wasteful class action lawsuits against Montana businesses that receive biometric data.

The bill's notice and consent requirements are unworkable.

The bill imposes highly specific notice and consent requirements that would make it unworkable to obtain consent for positive uses of biometric data, such as account access and management and securing accounts. The notice must be in writing and state all the specific purposes for which biometric data will be used, along with "the length of time the biometric data will be collected, stored, and used," which is rarely known at the time of collection for various reasons including that the duration of the customer relationship is generally unknown at inception. What is more, consent must be obtained (and could be withdrawn) *separately* for both the *purpose* and the *length of time* the data will be stored, complicating the process for consumers and businesses.

This type of consent is impractical. For example, consider voice recognition devices commonly used to obtain services, which must ascertain that the voice is from a real person and not a recording. It is not always feasible to obtain the consent required under the bill. The requirement would impose a burden on both Montana residents, who would have to review the notices, and on businesses, who would have to obtain and manage the consents.

The liability exposure created by the bill would create huge risk for companies.

The bill would create huge class action litigation exposure for any violations of the law by commercial entities, seriously deterring uses of biometric data for fraud prevention, data security and other beneficial purposes. The result would be to enrich trial lawyers without striking a balance that allows use of biometric data for purposes that significantly benefit Montana residents and businesses.

The bill prohibits beneficial fraud prevention practices.

Moreover, the bill would make current uses of biometric data for security and fraud prevention purposes impossible. For example, biometric data is used to secure access to highly sensitive buildings, to detect fraudulent callers and to improve security on financial accounts. Because there are cases in which fraud prevention is necessary to protect people and premises, the bill would put Montana residents at great risk of not just fraud and security threats, but physical harm.

Fraudsters and other criminals will obviously not consent to use of their biometric data for fraud prevention and security purposes, so private businesses would not be able to screen those posing the highest risk of fraud and security breaches. In Illinois, the only state that regulates the use of biometrics and has a private right of action, businesses are avoiding using biometric data for fraud and security purposes because of huge risk of costly class actions. As a result there is a much greater risk of fraud, harming both businesses and their customers.

For these reasons, our members oppose HB 518 and urge you not to move forward with the bill.

Sincerely,

Association of National Advertisers
CompTIA
Internet Coalition
State Privacy & Security Coalition
TechNet