



May 19, 2022

**Testimony of Tyler Smith  
Chamber of Progress**

**California Senate  
Appropriations Committee  
SB 1189: Biometric information**

Senator Anthony Portantino  
Chair  
Committee on Appropriations  
California State Senate

Dear Chair Portantino:

On behalf of Chamber of Progress, a center-left tech industry association that works to ensure that all Americans benefit from technological leaps, we write to share our concerns about **SB 1189**.

Chamber of Progress supports privacy protections for consumers, and we appreciate the aim of SB 1189, as biometrics have important implications for consumer privacy. Unfortunately, the bill's approach could threaten the safety and security of California's residents, and could deny Californians other benefits of technological advances in biometrics.

**SB 1189 Could Impact Advanced Security Measures**

SB 1189 could make it nearly impossible to use video surveillance measures for the safety and security of individuals as a result of the overly broad definition of "biometric information" and the lack of any exceptions to the requirement to obtain "informed written consent." Because regulated biometrics include photos and videos that could be used to create biometric measurements, routine uses of video cameras at ATMs, in parking lots, or in individuals own homes could give rise to legal violations.

In addition, newer uses of biometrics improve the security of important transactions, electronic devices, and online accounts. Biometrics improve security by assigning a value unique to an individual that cannot be lost, forgotten, faked, guessed, written on a Post-It note, or obtained via social engineering.

This vastly improves the security of online accounts and phone transactions by eliminating some of the most common ways that hackers and identity thieves access private accounts. But these security benefits for consumers are threatened because the bill's requirements seem ill-suited to the online and phone environments, and contain no exceptions for security and anti-fraud measures.

## **SB 1189 Could Deny California Resident the Benefits of Technological Advances**

In addition to security benefits, biometric technology benefits consumers in a number of ways, for example:

- Biometrics enables important transactions, such as buying or selling a home, to be conducted remotely—something that has benefited many during the pandemic.
- Biometrics can allow remote unlocking of a car when the keys are locked inside.
- It can offer peace of mind through the ability to monitor one's home while away or to see who is at the door before answering.
- Frequent travelers can speed through the airport security line.
- Online shoppers can virtually “try on” a new outfit or hair color.
- Parents who have their hands full don't have to juggle keycards, keys, or entering a passcode to unlock the front door to their building, their car, or their phone.
- Families with voice-enabled smart home devices can set unique preferences for each family member who can be recognized by voice.

We are just at the early stages of exploring how biometric technology can improve our lives, but SB 1189 could deny California residents the opportunity to take advantage of these advances.

## **SB 1189 Contains Impractical Provisions**

The bill's requirement to obtain “informed written consent” for use of a biometric information makes no provision for, and offers no exceptions for, situations where obtaining such consent would be impossible or impracticable. These include consent for security cameras in areas where the owner of the camera does not have a relationship with everyone whose face could be captured, or where voice-enabled devices may be in use and the service provider does not control who has access to the device.

California SB 1189 is modeled on Illinois' Biometric Information Privacy Act (BIPA), but goes beyond notice and consent by **limiting the circumstances** under which a business entity may collect biometric information to those where the biometric information is required to provide a service to the person whose biometric information is to be collected or another “business purpose” as defined by the CCPA (Section 1798.140 of the California Civil Code). It also prohibits a business from refusing to provide a service to a consumer who has refused to consent to collection of biometric information unless it is “strictly necessary” to provide the

service. For example, in the pursuit of a more secure system, banks turn to biometrics to enhance safety.<sup>1</sup> Under this bill, banks would lose this beneficial tool.

The bill's few exceptions to biometric information disclosure are too narrow, leaving most uses for security and fraud-detection outside the bill's scope. Even the exception for completion of a financial transaction is too narrow to allow financial institutions to analyze voice to authenticate account ownership, unless the bank knows for certain the consumer is calling to conduct a financial transaction as opposed to calling to report their card stolen.

We are concerned that coupling these requirements with a private right of action could deter businesses from offering California residents the benefits of biometric technology, as we have seen happen as a result of biometric privacy laws.<sup>2</sup>

Privacy laws and safeguards are crucial to the protection of California consumers. We welcome the opportunity to work with the committee to create alternative legislation that will benefit consumers without the consequences described above.

Thank you for your time and consideration on this important matter.

Sincerely,



Tyler Smith  
Director of State and Local Government Relations  
Chamber of Progress

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<sup>1</sup> <https://www.nerdwallet.com/article/banking/biometrics-when-your-bank-scans-your-voice-face-or-eyes>

<sup>2</sup> <https://www.ksat.com/news/local/2022/05/12/texans-can-no-longer-use-certain-instagram-filters-due-to-facial-recognition-lawsuit/>