



February 6, 2023

The Honorable David Farnsworth, Chair  
Senate Transportation and Technology Committee  
Arizona State Capitol Complex  
1700 W Washington Street  
Phoenix, AZ 85007

**Re: OPPOSE SB 1238 (Rogers) - biometrics identifiers; collection; retention; disclosure**

Chair Farnsworth and members of the Committee:

Thank you for the opportunity to submit testimony for the record regarding SB 1238.

Our corporate partners include companies like Amazon, Apple, Pindrop, and CLEAR, but our partners do not have a vote on or veto over our positions. We urge your committee to **oppose SB 1238**, which would make it nearly impossible to use biometrics for the safety and security of individuals, and would deny Arizonans the benefits of rapidly evolving technology.

**SB 1238 would effectively ban routine and advanced security measures.**

Biometrics improve the security of important transactions, electronic devices, and online accounts by assigning a value unique to an individual that cannot be lost, forgotten, faked, 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 SB 1238's requirements are ill-suited to the online and phone environments. The bill's requirement to obtain "affirmative written consent" and lack of exceptions for

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security and anti-fraud measures will effectively ban the use of biometrics for security purposes.

For example, an insurance company might analyze a caller's voice to authenticate account ownership. Under this bill, a fraudulent caller who reached the stage where biometric authentication was applied could sue the insurance company for impermissibly analyzing their voice without prior written consent.

**This bill would also deny Arizonans the benefits of technological advances.**

We are just at the early stages of exploring how biometric technology can improve our lives, but SB 1238 stands to deny Arizona residents the choice to take advantage of these advances. Section 18-702(C) states: "A private entity in possession of [...] biometric information may not [...] otherwise profit from a person's [...] biometric information." As written, this would outlaw the use of biometrics as part of a service offered to consumers or as any other part of a for-profit enterprise.

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

- Biometrics enable 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.
- They 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 using biometric verification systems.
- Families with voice-enabled smart home devices can set unique preferences for each family member who can be recognized by voice.



**Coupling the bill’s requirements with a private right of action for violations would deter businesses from offering Arizona’s residents these benefits.**

In Illinois, similar legislation to this bill was passed and class action lawsuits subsequently skyrocketed.<sup>1</sup> Unfortunately, those lawsuits primarily benefited trial attorneys rather than individual plaintiffs. These lawsuits also had a chilling effect for consumers: augmented reality products, like face filters, were preemptively blocked for users in the state,<sup>2</sup> and some companies opted not to sell their products in the state at all.<sup>3</sup>

We welcome the opportunity to work with the committee to create alternative legislation that will benefit consumers without denying them the security and convenience biometric technology can provide. For example, allowing a cure period of 30 days would give companies acting in good faith the opportunity to address inadvertent violations without stifling innovation.

Privacy laws and safeguards are crucial to the protection of Arizona consumers. While we urge the committee to oppose SB 1238, we are happy to be a resource in future efforts to protect consumers’ security and privacy without stifling innovation.

Thank you,

*Kouri C. Marshall*

**Kouri Marshall**

Director of State and Local Public Policy, Central US  
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<sup>1</sup> <https://instituteforlegalreform.com/wp-content/uploads/2021/10/ILR-BIPA-Briefly-FINAL.pdf>

<sup>2</sup>

<https://www.chicagotribune.com/business/ct-biz-meta-pulls-augmented-reality-biometrics-cb-20220518-rp7a6bd7afae5djl24yjy6pgy-story.html>

<sup>3</sup> <https://www.sony.com/electronics/support/smart-sports-devices-entertainment-robots/ers-1000/articles/00202844>  
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