



February 21, 2017

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Re: EFF support for Montana HB 518 re biometric privacy

To the members of the Montana House Judiciary Committee:

The Electronic Frontier Foundation urges you to vote in favor of House Bill 518, the proposed Montana Biometric Information Privacy Act.¹

EFF is a member-supported, nonprofit civil liberties organization that works to protect free speech and privacy rights in the digital world. EFF was founded in 1990, is headquartered in San Francisco, and has over 36,000 members.

1. Why Montana needs HB 518

The privacy of our biometric information is in great danger.

¹ <http://leg.mt.gov/bills/2017/BillPdf/HB0518.pdf>.

It is easy for someone else to capture our biometrics. We can't hide our biometrics from others. For example, we cannot shield our faces as we go about our day in public places, and we often leave our fingerprints, voiceprints, and DNA behind us. Once someone captures our biometrics, there is little we can do about it. We cannot change our biometrics, unlike our password and mailing addresses. Moreover, the technology of biometric capture is rapidly improving. For example, cameras are increasingly accurate at long distances, and facial recognition algorithms are increasingly able to match images against each other.

Once captured, it is easy for someone to use our biometrics against us. Researchers at Carnegie Mellon University used basic facial recognition tools to identify passing strangers, and to match their photos to sensitive information available online like social security numbers.² A Russian smartphone app called FindFace lets users identify strangers by taking photos of their faces and then matching those photos against VKontakte, a Russian social media site.³ Thieves might use our biometrics to break into our accounts and steal our identities.

Moreover, it is easy to share our captured biometric information. If one entity captures our biometrics, it can sell them to someone else. Moreover, if the company that holds our biometrics suffers a data breach, then our biometrics can be widely used and disseminated by the thief.

2. What HB 518 would do

HB 518 would limit how private entities (including people, corporations, and other groups) capture, use, and share our biometric information. *See* Section 2(3). The bill would not apply to government use of biometrics.

First, the bill would bar a private entity from capturing a person's biometric information, unless they first obtained written consent. *See* Section 3(1).

Second, the bill would bar a private entity from disclosing a person's biometric information, unless they first obtained written consent, or as required by law or a court order. *See* Section 4(2). Further, the bill would bar sale, lease, or trade of biometrics. *See* Section 4(1).

² <https://www.cmu.edu/homepage/society/2011/summer/facial-recognition.shtml>.

³ <https://www.theatlantic.com/technology/archive/2016/05/find-face/483962/>.

Third, the bill would require a private entity that possesses a person's biometric information to protect that information from disclosure. Specifically, a private entity would have to use the reasonable standard of care in their industry, and they would have to protect biometric information at least as well as they protect other sensitive information. *See* Section 5(1).

Fourth, the bill would require a private entity that possesses a person's biometric information to destroy it when the initial purpose of collection is fulfilled, or when the agreed period of storage has ended. *See* Section 5(2).

The bill would ensure enforcement of these critical privacy protections with a private cause of action. *See* Section 7.

The legislatures in Illinois⁴ and Texas⁵ have enacted similar protections of biometric privacy.

3. One suggested amendment

EFF recommends one small amendment to HB 518. Specifically, we recommend the addition of one word and the ~~deletion~~ of four words from Section 4(1)(a):

A private entity that possesses a person's biometric data or biometric information may not sell, lease, or trade, ~~or otherwise profit from~~ the person's biometric information.

Section 4(1)(a) must be read along with the following Section 4(2), which allows transfer of biometric information with written consent. To protect biometric privacy, there should be a flat ban on the sale, lease, or trade of biometric information. But to facilitate technological innovation, without intruding on biometric privacy, a person should be able to consent to a private entity "profiting from" the use of their biometrics.

⁴ 740 ILCS 14, <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3004&ChapterID=57%20>.

⁵ Tex. Bus. & Com. Code Ann. § 503.001, at <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.503.htm>.

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In sum, EFF urges you to vote in favor of HB 518, the Montana Biometric Information Privacy Act. While we respectfully suggest the small amendment discussed above, we urge a “yes” vote with or without this amendment. If you have any questions, please do not hesitate to email me at adam@eff.org, or to call me at (415) 436-9333, extension 176.

Sincerely

Adam Schwartz
Senior Staff Attorney

cc: Rep. Nate McConnell (Rep.Nate.McConnell@mt.gov)
House Judiciary Committee (PO Box 200400, Helena, MT 59620-0400)