



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

March 11, 2016

Senator Terry Link
Illinois General Assembly
senator@link30.org

Re: SB 2409, amendment to the Illinois Biometric Privacy Act – oppose

Dear Senator Link:

The Electronic Frontier Foundation (EFF) is a non-profit member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 22,000 dues-paying members and supporters across the country.

The EFF strongly supports the Illinois Biometric Privacy Act of 2008. *See* 740 ILCS 14/1. It provides critical protection of biometric privacy, including of “face geometry,” from various intrusions, including capture without written informed consent. This ensures, among other things, that store owners are not capturing the images of our faces as we walk in, figuring out who we are based on automated facial recognition analysis, rapidly mining data about us, using that data to tailor sales to us as we move about the store, and keeping all of this information to use in follow-up targeted advertising. We should all be able to enjoy the anonymity of a crowded place without such technological intrusion.

The EFF respectfully opposes SB 2409, which would create a large new exception from this salutary statutory protection. Licensed private security organizations, for purposes of crime prevention and law enforcement, would be allowed to capture a scan of a person’s face geometry, with no notice and consent, to compare the scan to government “mug shot” databases of the photos of arrested people. Apparently, the goal is to detect potential shoplifters as they enter the store, and perhaps scrutinize them while in the store or deny them service. This proposal has many serious problems.

First, people should be able to go about their business, including entering stores to buy necessities, without being subjected to this intrusion on their biometric privacy. We should not be treated as “guilty until proven innocent” as a cost of doing business in a store.

Second, while the EFF strongly believes that the threshold for capturing someone else’s biometric information should be (as in the current statute) informed written *consent*, the bill does not even require any *notice* to shoppers. Nothing in the bill requires stores using the proposed system to notify their customers that their face geometry is being captured, converted into digital form to conduct facial recognition analysis, compared to mug shot databases, and retained for 30 days even if there is no match. This denies consumers the information they need to make an informed choice, including to take their business elsewhere if they wish.

Third, store security should not treat customers as potential shoplifters just because they appear in a police mug shot database. Many people are wrongfully arrested. Many arrested people are

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org

never charged. Many charged people are never convicted. Many people are arrested for crimes that do not correlate in any way to future shoplifting. Perhaps most importantly, given the many unfair and unresolved racial disparities in our criminal justice system, this proposal may cause new unfair racial disparities in our market places.

Fourth, the bill would allow retention of our captured face geometry for 30 days after our “last interaction with the entity,” meaning the private security organization. Because many of these security organizations have a large geographic scope, the 30-day retention period would restart not just every time we reenter the same store, but every time we enter a new store that retains the same security firm. Moreover, the security firms could retain the images of our faces whether or not our faces matched any mug shot database, and whether or not we attempted to shop lift or commit any other crime in the store. It is unclear what store security benefit is advanced by this dragnet lengthy retention of our face geometry. Given the constant danger of computer security breaches, we would all be in danger of hackers stealing from these security firms the images of our faces entering various stores, and potentially exploiting those images against us.

Fifth, if this special exception for the theft prevention industry is granted, other demands for special exemptions will likely follow from other industries. Many will plausibly argue that their special exemptions may make their businesses more profitable. But the point of this Illinois statute is that the right to biometric privacy should not be burdened by such business practices.

For all of these reasons, the EFF respectfully requests that you do not advance SB 2409. If I can be of any further assistance, please do not hesitate to call me at (415) 436-9333, extension 176, or to email me at adam@eff.org.

Sincerely,

Adam Schwartz
Senior Staff Attorney
Electronic Frontier Foundation

cc: Caitlyn McEvoy, Office of the Senate President (cmcevoy@senatedem.ilga.gov)