

AMERICAN PAYROLL ASSOCIATION

February 22, 2022

The Honorable Bill Ferguson
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The Honorable Eric Luedtke
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The Honorable Sara Love
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The Honorable Adrienne Jones
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The Honorable Brian Feldman
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Re: Recommendations on S.B. 0335 and H.B. 0259, Biometric Identifiers Privacy Act

Dear Senators and Delegates:

The American Payroll Association (APA) requests clarity on and expansion of the exceptions for legitimate employer biometric identifier systems that protect employees in S.B. 0335 and H.B. 259, the Biometric Identifiers Privacy Act. Privacy and protection of employees' personally identifiable information (PII) are of paramount concern to APA and its payroll professional members. The APA applauds the objective of the legislation to establish effective consumer protections without unduly impeding the critical functioning of business activity. However, the proposed legislation does not fully recognize employers use of biometric timekeeping and security systems that help ensure that employees are paid full and fair wages and limit who can access employee data.

ABOUT THE APA

The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and workers.

USE OF BIOMETRIC INDICATORS IN PAYROLL MANAGEMENT

APA's payroll professional members are directly responsible for managing employees' PII and pay-related data and are keenly aware of the security risks from collecting and maintaining that data. Because biometric identifiers are unique to each employee, they can provide greater protections from access by unauthorized individuals. Employers cannot sell or trade this information. They do contract with third-party, workforce-management, system vendors and share employee data from biometric timekeeping systems with outsourced entities, such as payroll service providers, under agreements that require a high level of data protections.

With commercial workforce management systems that use biometric identifiers to track employees' work hours and authenticate access to the workplace, employees must acknowledge and receive training in use of the system for purposes of access, timekeeping, and payroll administration. In advance of use, employees are provided with system information and acknowledge that they received the information. These third-party systems provide information that includes enrollment procedures, purpose and use, data storage, data destruction, and security measures.

Biometric timekeeping systems ensure that employees hours are recorded correctly. Other employees and unauthorized individuals cannot interfere and change the hours that an employee works. This ensures that employees are paid accurately for the hours that they worked, including overtime.

Facial recognition technology, in conjunction with voice activation features, have become increasingly sought after during the COVID-19 pandemic because of their ability to provide a touchless experience for employees.

CONCERNS WITH SPECIFIC BILL PROVISIONS

Section 14-4402 and Employer Exceptions

The APA urges greater employer exceptions in Section 14-4402 to accommodate use of employer biometric systems. In Section 14-4402(A) private entities that collect or use biometric identifiers in Maryland would be required to establish and make publicly available guidelines for permanently destroying biometric identifiers. The destruction must occur following the earliest of the end of the initial purpose, within one year after the individual's last interaction with the private entity, or within 30 days after the private entity receives a request to delete the biometric identifiers. The public requirement is qualified by Subsection (B) if the biometric identifiers apply only to employees and when used solely for internal operation.

The following are provided for your consideration:

- Subsection (B) is unclear on whether the term "internal operations" includes outsourced services, such as payroll service providers, earned wage access vendors, third-party

workers compensation entities, and insurance companies. In addition, this exception only accounts for public disclosure of guidelines not to the destruction of biometric identifiers.

- The provision on the 30-day request requires greater exclusions. An employer cannot eliminate biometric identifiers used to authenticate employees for secure access and ensure compliance with wage and hour laws within a 30-day request by employees or agents of employees. Even when separated from an employer, the former employee may need to access information, such as for income tax reporting.
- In some instances, beneficiaries are identified through biometric identifiers and this information is shared with financial institutions, such as for retirement accounts. The employer exceptions do not accommodate for access by beneficiaries.

Section 14-4405 and Private Right of Action

The APA requests that the Maryland legislature eliminate the private right of action for legitimate employer, workforce management provider, and payroll service provider biometric systems in Section 14-4405. There are appropriate avenues for employees to challenge employer practices through the Maryland Department of Labor and Attorney General's Office. In the employment context, the private right of action opens the door for individuals and attorneys to collect huge amounts of money without protecting employees PII and payroll management systems.

The APA supports the transparency and reporting requirements in S.B. 0335 and H.B. 259, but also supports the use of available tools to protect employees' information and ensure that employees are paid fair and full wages. These important employee protections should not be sacrificed by restrictions on use of biometric identifiers in Maryland law.

Thank you for your consideration of biometric identifiers in the employment context. To discuss these issues further, please contact me at ajacobsohn@americanpayroll.org or 202-669-4001.

Sincerely,



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Director, Government Relations

For Cochairs, GRTF State and Local Topics Subcommittee:
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