



Memorandum

To: Senator Carlo Leone and Representative and Representative David Baram, Co-Chairs of the General Law Committee

Cc: State Representative Tami Zawistowski

From: Matt Mincieli, Northeast Region Executive Director, TechNet

Date: February 23, 2016

Re: HB 5326, An Act Prohibiting the Capture and use of Facial Recognition Technology for Commercial Purposes

Dear Chairman Leone and Chairman Baram, and through you to the members of the General Law Committee, my name is Matt Mincieli, and I am the Northeast Region executive director at TechNet. TechNet is a state and federal policy trade association made up of CEOs and senior executives from more than 70 of the nation's leading technology and innovation companies. On behalf of our membership, we respectfully submit the following testimony in opposition of HB 5326, filed by the General Law Committee.

TechNet members are very concerned with the security, transparency and control of their consumer's privacy and are constantly evolving their technology to safeguard it while at the same time encouraging national and international groups to undertake massive efforts in collaboration with the tech industry to address privacy issues associated with biometric technology and develop a voluntary, enforceable code of conduct for industry participants that will be frequently updated to take in to account the speed with which this technology is evolving and outpacing the ability of policy makers to properly regulate it.

While the original intent of HB 5326 was to prohibit retailers from using software to track the behavior of their customers for marketing purposes and to protect the privacy of vulnerable segments of the populations such as the elderly and minors, as currently drafted, this legislation would actually throw up obstacles and inconveniences to many of the services that consumers of all ages have become accustomed to using in this digital age by broadly prohibiting the capture and use of an individual's biometric identifier by a business for "commercial purposes" unless the business has received the individual's consent.

We are concerned that HB 5326 is overly broad and impractical to implement and will have numerous unintended consequences for retailers, consumers the emerging technologies sector in Connecticut. For example, the bill defines biometrics as "a record of face geometry". While biometrics and facial recognition technology is changing how retailers and consumers operate, a

misconception that is implied in this legislation is that notice and consent for the collection of biometric data can be achieved in all instances. This is often not the case, and there are many contexts in which it is impossible to provide clear and conspicuous notice to consumers. This may include educational, newsgathering, security, or fraud prevention, such as tutoring services, human trafficking organizations, banks and casinos, respectively. While the facial recognition systems used for these applications may be different than those used by an online website or a retail establishment, these security providers and data collectors, like websites and retailers, are using facial recognition for a “commercial purpose.”

If the strict notice and consent requirements were to become law, they would hinder the innovation of other devices because the most promising biometrics technologies cannot incorporate a notice and consent interface. Many of the most beneficial online technologies currently in development – for example, technologies that make up the so-called “Internet of Things” – often do not have, and could not reasonably be expected to have, an interface to enable consumers to receive notice or provide consent, and if they did may not be practical for a company to build out or invest in on a large scale if individual notice and consent opt-ins were required. We believe it is crucial that any biometric regulation allow companies the flexibility in how they notify consumers and enable control over consumers’ biometric information.

TechNet believes that any proposed biometric legislation should balance the benefits of the technology with privacy concerns, and focus on the real harm to consumers. Unfortunately, HB 5326 fails to strike this delicate balance. Instead of covering “commercial purposes,” legislation should attempt to cover authentication purposes more specifically. The intent should be to assure that individuals are protected from harm in cases where biometric data is used for authentication. The confidentiality of someone’s account authentication details is absolutely critical, and is deserving of strong protections, because the sale, sharing or breach of that data could bring great harm to the individual. We should be wary of regulating biometric data that only adds value to a consumer’s experience.

In closing, we respectfully thank you for your attention to our testimony and on behalf of our memberships ask that you consider the implications of passing HB 5326 on the technology sector of Connecticut. If TechNet or any of our member companies can be of any assistance to you and your Committee as you deliberate this important legislation, please feel free to consider us a resource and contact us at mmincieli@technet.org.