



December 7, 2020

TO: Assembly Science & Technology Committee
FROM: Eric DeGesero, Government Affairs
RE: **No on Assembly Bill 3625**

The New Jersey Civil Justice Institute is a statewide, nonpartisan coalition of the state's largest employers, small businesses and leading trade associations. NJCJI's mission is to promote a fair and predictable civil justice system in New Jersey. In accordance with that mission and for the reasons set forth below, NJCJI opposes the private right of action created by Assembly Bill 3625.

NJCJI appreciates the sponsor's concern for protecting individuals' biometric information and takes no position on that policy, generally. However, NJCJI opposes the enforcement mechanism in Section 5. Specifically, Section 5 creates a private right of action for *any* violation of Section 4 by a private entity and allows affected individuals to pursue liquidated damages. The private right of action and liquidated damages provisions will create a financial incentive for class action lawsuits against private entities for technical violations, despite the private entity's good faith and the lack of any real harm to the public.

For instance, purely inadvertent violations of a private entity's own retention schedule, or an accidental disclosure of biometric information to a reputable vendor that is promptly remediated, could still serve as a basis for class action liability under the bill as currently drafted. If a class of 5,000 customers each sought the minimum \$1,000 in liquidated damages for the inadvertent release of biometric information to a vendor or failure to destroy it pursuant to a retention schedule, it could lead to a potential \$5,000,000 award under Section 5. For affected small- and medium-sized businesses, such an award could easily lead to insolvency.

Accordingly, NJCJI respectfully requests that Section 5 of the bill be amended so the exclusive civil enforcement authority is vested in the Attorney General's Office. The Attorney General can exercise sound discretion over enforcement of Section 4 to ensure that only violations that present actual harm to the public are addressed and pursue penalties without any personal financial incentive.

In the alternative, NJCJI respectfully requests that the liquidated damages provisions in Section 5 be removed, and also, that aggrieved persons be expressly required to prove an *ascertainable loss* as a condition of pursuing damages under Section 5.

For these reasons, NJCJI urges you to vote NO to Assembly Bill 3625 in its current form.