

# Biometric Information Privacy Act



## Impact:

- Fines and penalties add up to excessive sums, creating potential for nuclear verdicts.
- Private right of action that allows employees to sue on their own behalf or as a group making BIPA litigation vulnerable to third party litigation funding.
- Prevailing party fee shifting provision may be attractive to class-action type lawsuits.

## Quick Facts:

- BIPA protects an individual's biometric data, such as fingerprints.
- Plaintiffs can recover the greater of \$1,000 or actual damages for each negligent violation, and the greater of \$5,000 or actual damages for each reckless or intentional violation.
- BIPA has a five (5) year statute of limitation period.

## What is Biometric Privacy Information Act?

Illinois' Biometric Information Privacy Act (BIPA) requires organizations to obtain written permission prior to using an individual's biometric data, such as a fingerprints. Unlike other states' biometric privacy acts, Illinois' BIPA authorizes private plaintiffs, rather than the Illinois Attorney General, to file lawsuits against organizations that may have violated the act.

A BIPA plaintiff may recover the greater of \$1,000 or actual damages for each negligent violation, and the greater of \$5,000 or actual damages for each violation the plaintiff alleges was recklessly or intentionally committed. In October 2022, a jury rendered the first BIPA verdict. The jury delivered a verdict against BNSF railroad awarding \$228 million to a group of truck drivers whose fingerprints had been collected.

BIPA's amendment in August 2024 clarifies that any person whose biometric identifier or biometric information is "scanned" by a private entity (regardless of the frequency) may only recover damages for one violation. The amendment changes BIPA's current "per scan" violation framework established in *Cothron* that provided for separate damages for each scan/instance of collection of biometric information. The amendment curtails the liability exposure for private entities subject to BIPA.

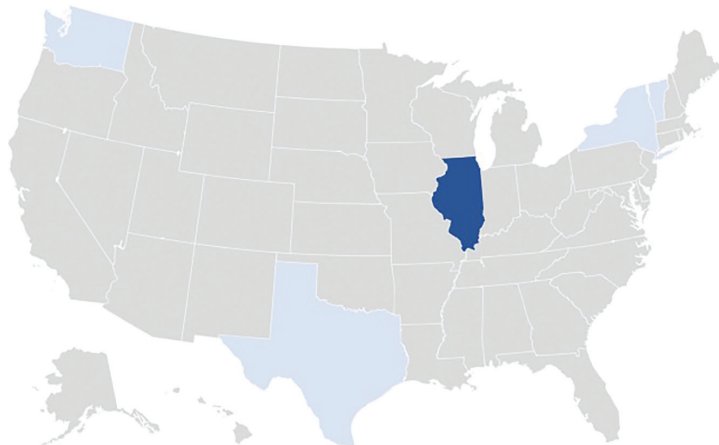
## Significant Decisions

- In *Rosenbach v. Six Flags Entertainment Corp.*, the Court held "an individual need not allege some actual injury or adverse effect" to "seek liquidated damages..."
- In *Tims v. Black Horse Carriers, Inc.*, the Illinois Supreme Court held that the statute of limitations for any BIPA claim is five years, rather than the shorter limitations established by some lower courts.
- In *Cothron v. White Castle System, Inc.*, the Court held that a BIPA cause of action accrues each and every time data is unlawfully collected, rather than just the first time. In its *Cothron* brief, White Castle estimated the total potential damages for the class could reach \$17 billion. White Castle is a private company with annual revenues under \$1 billion.

## State of the States

BIPA: IL

Other states with biometric privacy acts: Texas, New York, Vermont, Washington



## Solutions

Amendments to remedy the “per scan” violation framework are in place. Additional amendments to BIPA could require proof of an actual injury prior to damages being awarded and shortening of the five-year statute of limitations.

## Zurich North America Initiatives

- Proactively supports legislation in Illinois that would repeal the most challenging BIPA provisions and actively working to prevent similar legislation in other states.
- Leads the development and collaboration of industry partners on all lawsuit abuse reform efforts.
- Advocates for all lawsuit abuse reform issues impacting Zurich and its customers through its Government & Regulatory Relations (GRR) team.
- Created the first Claims Judicial & Legislative Affairs (CJLA) unit within Zurich North America Claims as a social inflation task force comprised of a dedicated team of experts to provide education and advocacy support.
- Launched and participates in the annual Lawsuit Abuse Reform Symposium with industry coalition members.
- Hosts Zurich Defense Attorney Summit twice a year through CJLA.
- Publishes the *Quarterly Digest* and *Regional Recap* to keep industry advocates informed through CJLA.

## What can you do?

- Support Illinois legislation that repeals the most damaging BIPA provisions.
- Oppose legislation in other states that include a private right of actions or per violation damages.
- Support civil justice organizations, such as the Illinois Coalition for Legal Reform, and legislators that back BIPA reform.

To learn how you can get involved, contact Zurich North America’s Claims Judicial & Legislative Affairs team at [usz\\_cjla@zurichna.com](mailto:usz_cjla@zurichna.com).



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