

Illinois Amends BIPA To Limit Violations And Recovery Under The Act

Labor & Employment Law Update

By Kevin Kleine on August 26, 2024

On August 2, 2024, Governor Pritzker signed Senate Bill 2979 ("SB 2979") into law, making significant changes to the Illinois Biometric Information Privacy Act ("BIPA"). By way of background, BIPA requires private employers to obtain a written release from employees before collecting their biometric identifiers and biometric information. The potential ramifications for failing to comply with BIPA were extensive for employers: either \$1,000.00 for negligent violations of the Act, \$5,000.00 for intentional or reckless violations of the Act, or the amount of the actual damages, whichever is greater.

SB 2979 significantly limits an individual's right of recovery by clarifying that a private entity commits only a single violation of BIPA regardless of the number of times it collects, discloses, or otherwise obtains or disseminates an individual's biometric identifier or biometric information *using the same method of collection*. It further clarifies that an aggrieved person may only recover once for such violations if the private entity used the same method of collection for each violation. This is important because an aggrieved person may still recover for *each* violation under which a private entity uses a *different* method of collection. For example, if an employer collects an employee's biometric identifier using both a fingerprint scan and a retinal scan, the employee could seek to recover for violations under each method of collection, if such collection violates the Act. However, if an employer requires employees to clock-in using a fingerprint scan only, the employer would incur liability for the initial fingerprint scan only, and not for subsequent scans.

SB 2979 overturns the 2023 Illinois Supreme Court decision *Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, which held that a separate claim accrues each time a private entity scans or transmits an individual's biometric identifier or information in violation of BIPA.

Lastly, SB 2979 adds a formal definition for the term "electronic signature," which includes an electronic sound, symbol, or process that is attached to or logically associated with a record and is executed or adopted by a person with the intent to sign the record. This is important because the law now specifies that a "written release" includes an employee's electronic signature.

These changes are effective immediately. Although SB 2979 does not apply retroactively to prior court decisions, it's unclear what effect it will have on pending lawsuits alleging violations of BIPA. Regardless, SB 2979 is good news for Illinois employers because it substantially limits an employer's liability and the potential for significant damages for BIPA violations.

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