

Illinois Legislature Passes Bill Limiting BIPA Recovery, but Significant Risk Remains

AUTHOR: MARK A. WILLIAMS

On May 16, the Illinois legislature passed an amendment to the Biometric Information Privacy Act ("BIPA") limiting recovery for violations of the law. Under the amendment, a business that collects a biometric identifier (e.g., a fingerprint) multiple times from the same person in violation of BIPA is liable only for a single violation. Under existing law, businesses that violate BIPA are liable for \$1,000 in damages per violation and \$5,000 in damages per "intentional or reckless" violation [1]. The legislation, SB2979 [2], now goes to Governor J.B. Pritzker for his signature.

The bill would overrule the Illinois Supreme Court's decision in *Cothron v. White Castle Sys.* [3], which held that a BIPA violation accrued each time a business improperly collected a biometric identifier from an individual. Under *Cothron*, a business using a fingerprint time clock could be liable for hundreds of violations per individual per year. For example, a business that employs 1,000 hourly workers that each work an average of 245 days a year and use a fingerprint time clock to clock in and out of work could be liable for \$490 million in BIPA damages for just a single year of violations (1,000 workers x 490 fingerprint collections x \$1,000 damages per violation). If the jury were to find that the BIPA violations were "intentional or reckless", damages could reach as high as \$1.2 billion (at \$5,000 in damages per violation). If SB2979 were to become law, that same business would be liable for a maximum of \$1 million in damages (or \$5 million if the violations were "intentional or reckless").

Regardless of this potential change, BIPA remains a significant risk to businesses that do not comply with the law. Any entity doing business in Illinois should regularly review its compliance with the law.

[1] [740 ILCS 14.](#)

[2] [SB2979 \(103rd Illinois General Assembly\) \(2024\).](#)

[3] [2023 IL 128004 \(July 18, 2023\).](#)