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# Illinois Limits Potential Damages under the Illinois Biometric Information Privacy Act

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On August 2, 2024, in what should be welcome news for employers and companies doing business in Illinois, Governor J.B. Pritzker signed into law amendments to the Illinois Biometric Information Privacy Act (BIPA), 740 ILCS 14/1 *et seq.*, that reduce potential damages available under this statute. In short, the BIPA amendments clarify that an individual cannot recover multiple damages based on the same alleged violations.

BIPA imposes notice, consent, and other requirements on the collection, use, disclosure, and other aspects of biometrics. Violations of BIPA could lead to liquidated damages of $1,000 or $5,000 for "each violation." Plaintiffs bringing BIPA lawsuits have argued that repeated alleged violations – for example, multiple scans of one individual's fingerprint on a purported biometric time clock – should lead to multiple damages per person. The prospect of such multiplicative damages presented substantial risk of exposure in BIPA class action lawsuits.

The BIPA amendments (available at IL SB2979 | 2023-2024 | 103rd General Assembly | LegiScan) make clear that entities that unlawfully collect or disclose the same purported biometric identifier or biometric information from the same person and through the same collection method commit only *one* violation, which means only *one* recovery of statutory damages per person. Thus, if the allegations in a BIPA lawsuit concern the same alleged biometric technology, each plaintiff and purported class member cannot seek damages for each alleged misuse of this technology per person.

In addition to clarifying, and limiting, available damages under BIPA, the amendments also specify that "electronic signatures" are permissible for obtaining the required written release from employees or consumers. The term "electronic signatures" is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." For example, an electronic acknowledgment on a company's intranet or through DocuSign should be sufficient.

These BIPA amendments go into effect immediately.

It remains to be seen whether and to what degree courts may apply these changes retroactively. It also remains to be seen whether these amendments will at least slow the pace of BIPA class action filings in Illinois. Regardless, companies that use purported biometric technology in Illinois should continue to ensure they develop and properly

implement BIPA-compliance processes.

## Additional Information

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