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Client Update on BIPA

Nick Kahlon, Geoffrey G. Young, and Blake Kolesa

On May 16, 2024, the Illinois General Assembly passed amendments to the Illinois Biometric Information Privacy Act (“BIPA”) clarifying that (1) each time a company collects biometrics from the same individual constitutes a single potential violation of BIPA (rather than each collection constituting a separate violation);¹ and (2) BIPA’s “written release” definition includes releases signed electronically. See [SB 2979](#) at 2:22–25, 3:6–7, 4:2–10. The Bill now awaits Governor J.B. Pritzker’s signature or veto. If signed, the amendments will take effect immediately, but the retroactive application of the amendments to past violations and prior suits will be left to further litigation.

These are the first amendments to BIPA since it was enacted in 2008. The amendments are in response to the Illinois Supreme Court’s February 2023 ruling in *Cothron v. White Castle Systems, Inc.*, [2023 IL 128004](#), that “a separate claim [accrues](#) under the Act each time a private entity scans or transmits an individual’s biometric identifier or information in violation of section 15.” The Court acknowledged White Castle’s estimate that it would face damages exceeding \$17 billion under this ruling but found that relief from the statutory language must come from the legislature. [2023 IL 128004](#), ¶ 40. The Court “suggest[ed] that the legislature review [BIPA’s] policy concerns and make clear its intent regarding the assessment of damages under the Act.” *Id.* ¶ 43. SB 2979 is the General Assembly’s response to that call.

Notably, these latest amendments do not alter the Court’s broad interpretation of BIPA’s statute of limitations in *Tims v. Black Horse Carriers, Inc.*, [2023 IL 127801](#), which was decided weeks before *Cothron* and also, expanded the possible damages recoverable under BIPA. In *Tims*, the Illinois Supreme Court held that claims brought under BIPA are subject to a five-year statute of limitations, rather than the one and two-year limitations that some lower courts had previously established. This aspect of BIPA remains unchanged for now.

¹ A parallel amendment was passed to BIPA’s prohibition against “dissemination” of biometrics, such that there can only be one violation for dissemination of an individual’s biometrics. SB 2979 at 4:11–22.

Client **Alert**

For more information, **please contact:**



Nick Kahlon
1.312.471.8755
nkahlon@rshc-law.com
Chicago



Geoffrey G. Young
1.212.660.1030
gyoung@rshc-law.com
New York



Blake Kolesa
1.312.471.8732
bkolesa@rshc-law.com
Chicago