



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3112

Introduced 2/19/2021, by Rep. Eva Dina Delgado

SYNOPSIS AS INTRODUCED:

740 ILCS 14/5
740 ILCS 14/10
740 ILCS 14/20
740 ILCS 14/25
740 ILCS 14/27 new
815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

Amends the Biometric Information Privacy Act. Makes a change in a Section concerning legislative findings and intent. Defines "actual harm" as a realized or actual identity theft, realized or actual loss, or a realized or actual injury. Changes the definitions of "biometric identifier", "biometric information", and "private entity". Provides that an alleged violation of the Act that has not resulted in actual harm is a violation of the Consumer Fraud and Deceptive Business Practices Act and solely subject to investigation and enforcement by the Attorney General. Provides that a person who has suffered actual harm (instead of aggrieved) by a violation of the Act shall have a right of action against an offending party. Provides that a prevailing party in an action brought as a result of actual harm may only recover for the initial (rather than each) violation of the Act. Provides that recovery against a private entity that negligently violates a provision of the Act may result in liquidated damages of \$250 (rather than \$1,000) or actual damages, whichever is greater. Provides that recovery against a private entity that intentionally or recklessly violates the Act may result in liquidated damages of \$500 (rather than \$5,000) or actual damages, whichever is greater. Provides that an action may not be brought later than one year from the violation date, if no actual harm occurred; or 3 years from the violation date, if actual harm has occurred. Provides that nothing in the Act shall be construed to apply to certain employees under the Day and Temporary Labor Services Act. Provides that the changes made to the Act apply retroactively to October 3, 2008. Makes a corresponding change in the Consumer Fraud and Deceptive Business Practices Act.

LRB102 16146 LNS 21522 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Biometric Information Privacy Act is
5 amended by changing Sections 5, 10, 20, and 25 and by adding
6 Section 27 as follows:

7 (740 ILCS 14/5)

8 Sec. 5. Legislative findings; intent. The General Assembly
9 finds all of the following:

10 (a) The use of biometrics is growing in the business and
11 security screening sectors and appears to promise streamlined
12 financial transactions and security screenings.

13 (b) Major national corporations have selected the City of
14 Chicago and other locations in this State as pilot testing
15 sites for new applications of biometric-facilitated financial
16 transactions, including finger-scan technologies at grocery
17 stores, gas stations, and school cafeterias.

18 (c) Biometrics are unlike other unique identifiers that
19 are used to access finances or other sensitive information.
20 For example, social security numbers, when compromised, can be
21 changed. Biometrics, however, are biologically unique to the
22 individual; therefore, once compromised, the individual has no
23 recourse, is at heightened risk for identity theft, and is

1 likely to withdraw from biometric-facilitated transactions.

2 (d) An overwhelming majority of members of the public are
3 wary ~~weary~~ of the use of biometrics when such information is
4 tied to finances and other personal information.

5 (e) Despite limited State law regulating the collection,
6 use, safeguarding, and storage of biometrics, many members of
7 the public are deterred from partaking in biometric
8 identifier-facilitated transactions.

9 (f) The full ramifications of biometric technology are not
10 fully known.

11 (g) The public welfare, security, and safety will be
12 served by regulating the collection, use, safeguarding,
13 handling, storage, retention, and destruction of biometric
14 identifiers and information.

15 (h) It is recognized that the use of fingerprint and hand
16 scanning is increasingly used by employers' timekeeping
17 systems to ensure proper payment of wages and to combat fraud
18 in the workplace.

19 (Source: P.A. 95-994, eff. 10-3-08.)

20 (740 ILCS 14/10)

21 Sec. 10. Definitions. In this Act:

22 "Actual harm" means a realized or actual identity theft,
23 realized or actual loss, or a realized or actual injury.

24 "Biometric identifier" means a retina or iris scan,
25 fingerprint, voiceprint, or scan of hand or face geometry.

1 Biometric identifiers do not include writing samples, written
2 signatures, photographs, human biological samples used for
3 valid scientific testing or screening, demographic data,
4 tattoo descriptions, or physical descriptions such as height,
5 weight, hair color, or eye color. Biometric identifiers do not
6 include donated organs, tissues, or parts as defined in the
7 Illinois Anatomical Gift Act or blood or serum stored on
8 behalf of recipients or potential recipients of living or
9 cadaveric transplants and obtained or stored by a federally
10 designated organ procurement agency. Biometric identifiers do
11 not include biological materials regulated under the Genetic
12 Information Privacy Act. Biometric identifiers do not include
13 information captured from a patient in a health care setting
14 or information collected, used, or stored for health care
15 treatment, payment, or operations under the federal Health
16 Insurance Portability and Accountability Act of 1996.
17 Biometric identifiers do not include an X-ray, roentgen
18 process, computed tomography, MRI, PET scan, mammography, or
19 other image or film of the human anatomy used to diagnose,
20 prognose, or treat an illness or other medical condition or to
21 further validate scientific testing or screening. Biometric
22 identifiers do not include numeric algorithms created by a
23 fingerprint, hand scan, facial geometry, or retinal scan and
24 used as part of an employer's timekeeping system that is not
25 directly connected to the personal information or banking
26 information of the worker.

1 "Biometric information" means any information, regardless
2 of how it is captured, ~~converted,~~ stored, or shared, based on
3 an individual's biometric identifier used to identify an
4 individual. Biometric information does not include information
5 derived from items or procedures excluded under the definition
6 of biometric identifiers.

7 "Confidential and sensitive information" means personal
8 information that can be used to uniquely identify an
9 individual or an individual's account or property. Examples of
10 confidential and sensitive information include, but are not
11 limited to, a genetic marker, genetic testing information, a
12 unique identifier number to locate an account or property, an
13 account number, a PIN number, a pass code, a driver's license
14 number, or a social security number.

15 "Private entity" means any individual, partnership,
16 corporation, limited liability company, association, or other
17 group, however organized. A private entity does not include a
18 State or local government agency. A private entity does not
19 include any court of Illinois, a clerk of the court, or a judge
20 or justice thereof. "Private entity" does not include any
21 company in this State that is regulated by the Day and
22 Temporary Labor Services Act.

23 "Written release" means informed written consent or, in
24 the context of employment, a release executed by an employee
25 as a condition of employment.

26 (Source: P.A. 95-994, eff. 10-3-08.)

1 (740 ILCS 14/20)

2 Sec. 20. Violation and right ~~Right~~ of action.

3 (a) An alleged violation of this Act that has not resulted
4 in actual harm is:

5 (1) a violation of the Consumer Fraud and Deceptive
6 Business Practices Act; and

7 (2) solely subject to investigation and enforcement by
8 the Attorney General.

9 (b) A ~~Any~~ person who has suffered actual harm aggrieved by

10 a violation of this Act shall have a right of action in a State

11 circuit court or as a supplemental claim in federal district

12 court against an offending party. A prevailing party in an

13 action brought as a result of actual harm may only recover for

14 the initial ~~each~~ violation of this Act:

15 (1) against a private entity that negligently violates

16 a provision of this Act, liquidated damages of \$250 ~~\$1,000~~

17 or actual damages, whichever is greater;

18 (2) against a private entity that intentionally or

19 recklessly violates a provision of this Act, liquidated

20 damages of \$500 ~~\$5,000~~ or actual damages, whichever is

21 greater;

22 (3) reasonable attorneys' fees and costs, including

23 expert witness fees and other litigation expenses; and

24 (4) other relief, including an injunction, as the

25 State or federal court may deem appropriate.

1 (c) An action under this Act may not be brought later than:

2 (1) one year from the violation date, by the Office of
3 the Attorney General, if no actual harm occurred; or

4 (2) 3 years from the violation date, if actual harm
5 has occurred.

6 (Source: P.A. 95-994, eff. 10-3-08.)

7 (740 ILCS 14/25)

8 Sec. 25. Construction.

9 (a) Nothing in this Act shall be construed to impact the
10 admission or discovery of biometric identifiers and biometric
11 information in any action of any kind in any court, or before
12 any tribunal, board, agency, or person.

13 (b) Nothing in this Act shall be construed to conflict
14 with the X-Ray Retention Act, the federal Health Insurance
15 Portability and Accountability Act of 1996 and the rules
16 promulgated under either Act.

17 (c) Nothing in this Act shall be deemed to apply in any
18 manner to a financial institution or an affiliate of a
19 financial institution that is subject to Title V of the
20 federal Gramm-Leach-Bliley Act of 1999 and the rules
21 promulgated thereunder.

22 (d) Nothing in this Act shall be construed to conflict
23 with the Private Detective, Private Alarm, Private Security,
24 Fingerprint Vendor, and Locksmith Act of 2004 and the rules
25 promulgated thereunder.

1 (e) Nothing in this Act shall be construed to apply to a
2 contractor, subcontractor, or agent of a State agency or local
3 unit of government when working for that State agency or local
4 unit of government.

5 (f) Nothing in this Act shall be construed to apply to an
6 employer licensed under and subject to the Day and Temporary
7 Labor Services Act if the employees of the licensed employer
8 are using time keeping systems owned, rented, leased, or
9 managed by the clients of the licensed employer.

10 (Source: P.A. 95-994, eff. 10-3-08.)

11 (740 ILCS 14/27 new)

12 Sec. 27. Applicability. The changes made to this Act by
13 this amendatory Act of the 102nd General Assembly apply
14 retroactively to October 3, 2008, the effective date of Public
15 Act 95-994.

16 Section 10. The Consumer Fraud and Deceptive Business
17 Practices Act is amended by changing Section 2Z as follows:

18 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

19 Sec. 2Z. Violations of other Acts. Any person who
20 knowingly violates the Automotive Repair Act, the Automotive
21 Collision Repair Act, the Home Repair and Remodeling Act, the
22 Dance Studio Act, the Physical Fitness Services Act, the
23 Hearing Instrument Consumer Protection Act, the Illinois Union

1 Label Act, the Installment Sales Contract Act, the Job
2 Referral and Job Listing Services Consumer Protection Act, the
3 Travel Promotion Consumer Protection Act, the Credit Services
4 Organizations Act, the Automatic Telephone Dialers Act, the
5 Pay-Per-Call Services Consumer Protection Act, the Telephone
6 Solicitations Act, the Illinois Funeral or Burial Funds Act,
7 the Cemetery Oversight Act, the Cemetery Care Act, the Safe
8 and Hygienic Bed Act, the Illinois Pre-Need Cemetery Sales
9 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
10 the Mortgage Rescue Fraud Act, subsection (a) or (b) of
11 Section 3-10 of the Cigarette Tax Act, subsection (a) or (b) of
12 Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail
13 Act, the Internet Caller Identification Act, paragraph (6) of
14 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
15 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
16 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
17 Residential Real Property Disclosure Act, the Automatic
18 Contract Renewal Act, the Reverse Mortgage Act, Section 25 of
19 the Youth Mental Health Protection Act, the Personal
20 Information Protection Act, subsection (a) of Section 20 of
21 the Biometric Information Privacy Act, or the Student Online
22 Personal Protection Act commits an unlawful practice within
23 the meaning of this Act.

24 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16;
25 99-642, eff. 7-28-16; 100-315, eff. 8-24-17; 100-416, eff.
26 1-1-18; 100-863, eff. 8-14-18.)