



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3199

Introduced 2/17/2023, by Rep. Jeff Keicher

SYNOPSIS AS INTRODUCED:

740 ILCS 14/10
740 ILCS 14/15
740 ILCS 14/20
740 ILCS 14/21 new

Amends the Biometric Information Privacy Act. Changes the term "written release" to "written consent". Allows written consent to be obtained by electronic means. Provides that a person aggrieved by a violation of the act may only commence an action after the aggrieved person provides a private entity 15 days' written notice identifying the specific provisions of the Act the aggrieved person alleges have been or are being violated. Provides that if, within the 15 days, the private entity actually cures the noticed violation and provides the aggrieved person an express written statement that the violation has been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated against the private entity. Provides that if a private entity continues to violate the Act in breach of the express written statement provided to the aggrieved person, the aggrieved person may initiate an action against the private entity to enforce the written statement and may pursue statutory damages for each breach of the express written statement and any other violation that postdates the written statement. Removes language providing that a prevailing party may recover for each violation of the Act. Requires the Department of Labor to include reference to any employer requirements under the Act in materials that the Department is required by law to provide employers in the State. Makes conforming changes.

LRB103 30904 LNS 57449 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 10, 15, and 20 and by adding
6 Section 21 as follows:

7 (740 ILCS 14/10)

8 Sec. 10. Definitions. In this Act:

9 "Biometric identifier" means a retina or iris scan,
10 fingerprint, voiceprint, or scan of hand or face geometry.
11 Biometric identifiers do not include writing samples, written
12 signatures, photographs, human biological samples used for
13 valid scientific testing or screening, demographic data,
14 tattoo descriptions, or physical descriptions such as height,
15 weight, hair color, or eye color. Biometric identifiers do not
16 include donated organs, tissues, or parts as defined in the
17 Illinois Anatomical Gift Act or blood or serum stored on
18 behalf of recipients or potential recipients of living or
19 cadaveric transplants and obtained or stored by a federally
20 designated organ procurement agency. Biometric identifiers do
21 not include biological materials regulated under the Genetic
22 Information Privacy Act. Biometric identifiers do not include
23 information captured from a patient in a health care setting

1 or information collected, used, or stored for health care
2 treatment, payment, or operations under the federal Health
3 Insurance Portability and Accountability Act of 1996.
4 Biometric identifiers do not include an X-ray, roentgen
5 process, computed tomography, MRI, PET scan, mammography, or
6 other image or film of the human anatomy used to diagnose,
7 prognose, or treat an illness or other medical condition or to
8 further validate scientific testing or screening.

9 "Biometric information" means any information, regardless
10 of how it is captured, converted, stored, or shared, based on
11 an individual's biometric identifier used to identify an
12 individual. Biometric information does not include information
13 derived from items or procedures excluded under the definition
14 of biometric identifiers.

15 "Confidential and sensitive information" means personal
16 information that can be used to uniquely identify an
17 individual or an individual's account or property. Examples of
18 confidential and sensitive information include, but are not
19 limited to, a genetic marker, genetic testing information, a
20 unique identifier number to locate an account or property, an
21 account number, a PIN number, a pass code, a driver's license
22 number, or a social security number.

23 "Private entity" means any individual, partnership,
24 corporation, limited liability company, association, or other
25 group, however organized. A private entity does not include a
26 State or local government agency. A private entity does not

1 include any court of Illinois, a clerk of the court, or a judge
2 or justice thereof.

3 "Written consent ~~release~~" means informed written consent
4 ~~or, in the context of employment, a release executed by an~~
5 ~~employee as a condition of employment.~~

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

7 (740 ILCS 14/15)

8 Sec. 15. Retention; collection; disclosure; destruction.

9 (a) A private entity in possession of biometric
10 identifiers or biometric information must develop a written
11 policy, made available to the public, establishing a retention
12 schedule and guidelines for permanently destroying biometric
13 identifiers and biometric information when the initial purpose
14 for collecting or obtaining such identifiers or information
15 has been satisfied or within 3 years of the individual's last
16 interaction with the private entity, whichever occurs first.
17 Absent a valid warrant or subpoena issued by a court of
18 competent jurisdiction, a private entity in possession of
19 biometric identifiers or biometric information must comply
20 with its established retention schedule and destruction
21 guidelines.

22 (b) No private entity may collect, capture, purchase,
23 receive through trade, or otherwise obtain a person's or a
24 customer's biometric identifier or biometric information,
25 unless it first:

1 (1) informs the subject or the subject's legally
2 authorized representative in writing that a biometric
3 identifier or biometric information is being collected or
4 stored;

5 (2) informs the subject or the subject's legally
6 authorized representative in writing of the specific
7 purpose and length of term for which a biometric
8 identifier or biometric information is being collected,
9 stored, and used; and

10 (3) receives a written consent ~~release~~ executed by the
11 subject of the biometric identifier or biometric
12 information or the subject's legally authorized
13 representative.

14 Written consent may be obtained by electronic means.

15 (c) No private entity in possession of a biometric
16 identifier or biometric information may sell, lease, trade, or
17 otherwise profit from a person's or a customer's biometric
18 identifier or biometric information.

19 (d) No private entity in possession of a biometric
20 identifier or biometric information may disclose, redisclose,
21 or otherwise disseminate a person's or a customer's biometric
22 identifier or biometric information unless:

23 (1) the subject of the biometric identifier or
24 biometric information or the subject's legally authorized
25 representative provides written consent ~~consents~~ to the
26 disclosure or redisclosure;

1 (2) the disclosure or redisclosure completes a
2 financial transaction requested or authorized by the
3 subject of the biometric identifier or the biometric
4 information or the subject's legally authorized
5 representative;

6 (3) the disclosure or redisclosure is required by
7 State or federal law or municipal ordinance; or

8 (4) the disclosure is required pursuant to a valid
9 warrant or subpoena issued by a court of competent
10 jurisdiction.

11 (e) A private entity in possession of a biometric
12 identifier or biometric information shall:

13 (1) store, transmit, and protect from disclosure all
14 biometric identifiers and biometric information using the
15 reasonable standard of care within the private entity's
16 industry; and

17 (2) store, transmit, and protect from disclosure all
18 biometric identifiers and biometric information in a
19 manner that is the same as or more protective than the
20 manner in which the private entity stores, transmits, and
21 protects other confidential and sensitive information.

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

23 (740 ILCS 14/20)

24 Sec. 20. Right of action. Any person aggrieved by a
25 violation of this Act shall have a right of action in a State

1 circuit court or as a supplemental claim in federal district
2 court against an offending party, which shall be commenced
3 only after the aggrieved person provides a private entity 15
4 days' written notice identifying the specific provisions of
5 this Act the aggrieved person alleges have been or are being
6 violated. If, within the 15 days, the private entity actually
7 cures the noticed violation and provides the aggrieved person
8 an express written statement that the violation has been cured
9 and that no further violations shall occur, no action for
10 individual statutory damages or class-wide statutory damages
11 may be initiated against the private entity. If a private
12 entity continues to violate this Act in breach of the express
13 written statement provided to the aggrieved person under this
14 Section, the aggrieved person may initiate an action against
15 the private entity to enforce the written statement and may
16 pursue statutory damages for each breach of the express
17 written statement and any other violation that postdates the
18 written statement. A prevailing party in any such action may
19 recover ~~for each violation~~:

20 (1) against a private entity that negligently violates
21 a provision of this Act, liquidated damages of \$1,000 or
22 actual damages, whichever is greater;

23 (2) against a private entity that intentionally or
24 recklessly violates a provision of this Act, liquidated
25 damages of \$5,000 or actual damages, whichever is greater;

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

1 expert witness fees and other litigation expenses; and
2 (4) other relief, including an injunction, as the
3 State or federal court may deem appropriate.
4 (Source: P.A. 95-994, eff. 10-3-08.)

5 (740 ILCS 14/21 new)

6 Sec. 21. Department of Labor requirement. The Department
7 of Labor shall include reference to any employer requirements
8 under this Act in materials, including handbooks, that the
9 Department of Labor is required by law to provide employers in
10 this State.