



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5375

by Rep. Jim Durkin

SYNOPSIS AS INTRODUCED:

740 ILCS 14/5
740 ILCS 14/10
740 ILCS 14/15
740 ILCS 14/20
740 ILCS 14/25
815 ILCS 505/2Z

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

Amends the Biometric Information Privacy Act. Changes the term of "written release" to "written consent". Provides that the written policy that is developed by a private entity in possession of biometric identifiers shall be made available to the person from whom biometric information is to be collected or was collected (rather than to the public). Deletes a provision regarding a right of action. Provides instead that any violation that results from the collection of biometric information by an employer for employment, human resources, fraud prevention, or security purposes is subject to the enforcement authority of the Department of Labor. Provides that an employee or former employee may file a complaint with the Department a violation by submitting a signed, completed complaint form. Provides that all complaints shall be filed with the Department within one year from the date of the violation. Provides that any other violation of the Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act, with enforcement by the Attorney General or the appropriate State's Attorney. Provides that the Act does not apply to a private entity if the private entity's employees are covered by a collective bargaining agreement that provides for different policies regarding the retention, collection, disclosure, and destruction of biometric information. Makes other changes. Makes a conforming change in the Consumer Fraud and Deceptive Business Practices Act.

LRB101 18683 LNS 68138 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 amended
5 by changing Sections 5, 10, 15, 20, and 25 as follows:

6 (740 ILCS 14/5)

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

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

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

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

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

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

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

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

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

15 (740 ILCS 14/10)

16 Sec. 10. Definitions. In this Act:

17 "Biometric identifier" means a retina or iris scan,
18 fingerprint, voiceprint, or scan of hand or face geometry.
19 Biometric identifiers do not include writing samples, written
20 signatures, photographs, human biological samples used for
21 valid scientific testing or screening, demographic data,
22 tattoo descriptions, or physical descriptions such as height,
23 weight, hair color, or eye color. Biometric identifiers do not
24 include donated organs, tissues, or parts as defined in the
25 Illinois Anatomical Gift Act or blood or serum stored on behalf

1 of recipients or potential recipients of living or cadaveric
2 transplants and obtained or stored by a federally designated
3 organ procurement agency. Biometric identifiers do not include
4 biological materials regulated under the Genetic Information
5 Privacy Act. Biometric identifiers do not include information
6 captured from a patient in a health care setting or information
7 collected, used, or stored for health care treatment, payment,
8 or operations under the federal Health Insurance Portability
9 and Accountability Act of 1996. Biometric identifiers do not
10 include an X-ray, roentgen process, computed tomography, MRI,
11 PET scan, mammography, or other image or film of the human
12 anatomy used to diagnose, prognose, or treat an illness or
13 other medical condition or to further validate scientific
14 testing or screening.

15 "Biometric information" means any information, regardless
16 of how it is captured, converted, stored, or shared, based on
17 an individual's biometric identifier used to identify an
18 individual. Biometric information does not include information
19 derived from items or procedures excluded under the definition
20 of biometric identifiers, including information derived from
21 biometric information that cannot be used to recreate the
22 original biometric identifier.

23 "Confidential and sensitive information" means personal
24 information that can be used to uniquely identify an individual
25 or an individual's account or property. Examples of
26 confidential and sensitive information include, but are not

1 limited to, a genetic marker, genetic testing information, a
2 unique identifier number to locate an account or property, an
3 account number, a PIN number, a pass code, a driver's license
4 number, or a social security number.

5 "Private entity" means any individual, partnership,
6 corporation, limited liability company, association, or other
7 group, however organized. A private entity does not include a
8 State or local government agency. A private entity does not
9 include any court of Illinois, a clerk of the court, or a judge
10 or justice thereof.

11 "Written consent ~~release~~" means informed written consent
12 ~~or, in the context of employment, a release executed by an~~
13 ~~employee as a condition of employment.~~

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

15 (740 ILCS 14/15)

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

17 (a) A private entity in possession of biometric identifiers
18 or biometric information must develop a written policy, made
19 available to the person from whom biometric information is to
20 be collected or was collected ~~public~~, establishing a retention
21 schedule and guidelines for permanently destroying biometric
22 identifiers and biometric information when the initial purpose
23 for collecting or obtaining such identifiers or information has
24 been satisfied or within 3 years of the individual's last
25 interaction with the private entity, whichever occurs first.

1 Absent a valid order, warrant, or subpoena issued by a court of
2 competent jurisdiction or a local or federal governmental
3 agency, a private entity in possession of biometric identifiers
4 or biometric information must comply with its established
5 retention schedule and destruction guidelines.

6 (b) No private entity may collect, capture, purchase,
7 receive through trade, or otherwise obtain a person's or a
8 customer's biometric identifier or biometric information,
9 unless it first:

10 (1) informs the subject or the subject's legally
11 authorized representative in writing that a biometric
12 identifier or biometric information is being collected or
13 stored;

14 (2) informs the subject or the subject's legally
15 authorized representative in writing of the specific
16 purpose and length of term for which a biometric identifier
17 or biometric information is being collected, stored, and
18 used; and

19 (3) receives a written consent ~~release~~ executed by the
20 subject of the biometric identifier or biometric
21 information or the subject's legally authorized
22 representative.

23 Written consent may be obtained by electronic means.

24 (c) No private entity in possession of a biometric
25 identifier or biometric information may sell, lease, trade, or
26 otherwise profit from a person's or a customer's biometric

1 identifier or biometric information.

2 (d) No private entity in possession of a biometric
3 identifier or biometric information may disclose, redisclose,
4 or otherwise disseminate a person's or a customer's biometric
5 identifier or biometric information unless:

6 (1) the subject of the biometric identifier or
7 biometric information or the subject's legally authorized
8 representative provides written consent ~~consents~~ to the
9 disclosure or redisclosure;

10 (2) the disclosure or redisclosure completes a
11 financial transaction requested or authorized by the
12 subject of the biometric identifier or the biometric
13 information or the subject's legally authorized
14 representative;

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

17 (4) the disclosure is required pursuant to a valid
18 warrant or subpoena issued by a court of competent
19 jurisdiction.

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

22 (1) store, transmit, and protect from disclosure all
23 biometric identifiers and biometric information using the
24 reasonable standard of care within the private entity's
25 industry; and

26 (2) store, transmit, and protect from disclosure all

1 biometric identifiers and biometric information in a
2 manner that is the same as or more protective than the
3 manner in which the private entity stores, transmits, and
4 protects other confidential and sensitive information.

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

6 (740 ILCS 14/20)

7 Sec. 20. Violation. Right of action.

8 (a) Any violation that results from the collection of
9 biometric information by an employer for employment, human
10 resources, fraud prevention, or security purposes is subject to
11 the enforcement authority of the Department of Labor. The
12 Director of Labor shall adopt rules necessary to administer and
13 enforce this authority. An employee or former employee may file
14 a complaint with the Department of Labor alleging a violation
15 of this Act by submitting a signed, completed complaint form.
16 All complaints shall be filed with the Department of Labor
17 within one year from the date of the violation.

18 (b) Any violation of this Act not encompassed by subsection
19 (a) constitutes a violation of the Consumer Fraud and Deceptive
20 Business Practices Act. The Office of the Attorney General or
21 the appropriate State's Attorney's Office has enforcement
22 authority under this Act and may enforce a violation of this
23 Act as an unlawful practice under the Consumer Fraud and
24 Deceptive Business Practices Act. Any enforcement action shall
25 occur within one year from the date of the violation. Any

1 ~~person aggrieved by a violation of this Act shall have a right~~
2 ~~of action in a State circuit court or as a supplemental claim~~
3 ~~in federal district court against an offending party. A~~
4 ~~prevailing party may recover for each violation:~~

5 ~~(1) against a private entity that negligently violates~~
6 ~~a provision of this Act, liquidated damages of \$1,000 or~~
7 ~~actual damages, whichever is greater;~~

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

11 ~~(3) reasonable attorneys' fees and costs, including~~
12 ~~expert witness fees and other litigation expenses; and~~

13 ~~(4) other relief, including an injunction, as the State~~
14 ~~or federal court may deem appropriate.~~

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

16 (740 ILCS 14/25)

17 Sec. 25. Construction.

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

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

1 (c) Nothing in this Act shall be deemed to apply in any
2 manner to a financial institution or an affiliate of a
3 financial institution that is subject to Title V of the federal
4 Gramm-Leach-Bliley Act of 1999 and the rules promulgated
5 thereunder.

6 (d) Nothing in this Act shall be construed to conflict with
7 the Private Detective, Private Alarm, Private Security,
8 Fingerprint Vendor, and Locksmith Act of 2004 and the rules
9 promulgated thereunder.

10 (e) Nothing in this Act shall be construed to apply to a
11 contractor, subcontractor, or agent of a State or federal
12 agency or local unit of government when working for that State
13 or federal agency or local unit of government.

14 (f) Nothing in this Act shall be construed to apply to a
15 private entity if the private entity's employees are covered by
16 a collective bargaining agreement that provides for different
17 policies regarding the retention, collection, disclosure, and
18 destruction of biometric information.

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

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

22 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

23 Sec. 2Z. Violations of other Acts. Any person who knowingly
24 violates the Automotive Repair Act, the Automotive Collision

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

1 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642,
2 eff. 7-28-16; 100-315, eff. 8-24-17; 100-416, eff. 1-1-18;
3 100-863, eff. 8-14-18.)