



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5396

Introduced 1/31/2022, by Rep. Jim Durkin

SYNOPSIS AS INTRODUCED:

740 ILCS 14/20
820 ILCS 305/5

from Ch. 48, par. 138.5

Amends the Biometric Privacy Information Act. Provides that if an employee brings an action against an employer under the Act, the employee's entitlement to relief shall be determined as provided in the Workers' Compensation Act. Amends the Workers' Compensation Act. Provides that an action arising under the Biometric Information Privacy Act due to the actions of an employer shall be adjudicated in accordance with the Workers' Compensation Act.

LRB102 24302 LNS 33535 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 Section 20 as follows:

6 (740 ILCS 14/20)

7 Sec. 20. Right of action.

8 (a) Any person aggrieved by a violation of this Act shall
9 have a right of action in a State circuit court or as a
10 supplemental claim in federal district court against an
11 offending party. A prevailing party may recover for each
12 violation:

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

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

19 (3) reasonable attorneys' fees and costs, including
20 expert witness fees and other litigation expenses; and

21 (4) other relief, including an injunction, as the
22 State or federal court may deem appropriate.

23 (b) If an employee brings an action against an employer

1 under this Act, the employee's entitlement to relief shall be
2 determined as provided in the Workers' Compensation Act.

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

4 Section 10. The Workers' Compensation Act is amended by
5 changing Section 5 as follows:

6 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

7 Sec. 5. Damages; minors; third-party liability.

8 (a) Except as provided in Section 1.2, no common law or
9 statutory right to recover damages from the employer, his
10 insurer, his broker, any service organization that is wholly
11 owned by the employer, his insurer or his broker and that
12 provides safety service, advice or recommendations for the
13 employer or the agents or employees of any of them for injury
14 or death sustained by any employee while engaged in the line of
15 his duty as such employee, other than the compensation herein
16 provided, is available to any employee who is covered by the
17 provisions of this Act, to any one wholly or partially
18 dependent upon him, the legal representatives of his estate,
19 or any one otherwise entitled to recover damages for such
20 injury.

21 However, in any action now pending or hereafter begun to
22 enforce a common law or statutory right to recover damages for
23 negligently causing the injury or death of any employee it is
24 not necessary to allege in the complaint that either the

1 employee or the employer or both were not governed by the
2 provisions of this Act or of any similar Act in force in this
3 or any other State.

4 Any illegally employed minor or his legal representatives
5 shall, except as hereinafter provided, have the right within 6
6 months after the time of injury or death, or within 6 months
7 after the appointment of a legal representative, whichever
8 shall be later, to file with the Commission a rejection of his
9 right to the benefits under this Act, in which case such
10 illegally employed minor or his legal representatives shall
11 have the right to pursue his or their common law or statutory
12 remedies to recover damages for such injury or death.

13 No payment of compensation under this Act shall be made to
14 an illegally employed minor, or his legal representatives,
15 unless such payment and the waiver of his right to reject the
16 benefits of this Act has first been approved by the Commission
17 or any member thereof, and if such payment and the waiver of
18 his right of rejection has been so approved such payment is a
19 bar to a subsequent rejection of the provisions of this Act.

20 (b) Where the injury or death for which compensation is
21 payable under this Act was caused under circumstances creating
22 a legal liability for damages on the part of some person other
23 than his employer to pay damages, then legal proceedings may
24 be taken against such other person to recover damages
25 notwithstanding such employer's payment of or liability to pay
26 compensation under this Act. In such case, however, if the

1 action against such other person is brought by the injured
2 employee or his personal representative and judgment is
3 obtained and paid, or settlement is made with such other
4 person, either with or without suit, then from the amount
5 received by such employee or personal representative there
6 shall be paid to the employer the amount of compensation paid
7 or to be paid by him to such employee or personal
8 representative including amounts paid or to be paid pursuant
9 to paragraph (a) of Section 8 of this Act.

10 Out of any reimbursement received by the employer pursuant
11 to this Section the employer shall pay his pro rata share of
12 all costs and reasonably necessary expenses in connection with
13 such third-party claim, action or suit and where the services
14 of an attorney at law of the employee or dependents have
15 resulted in or substantially contributed to the procurement by
16 suit, settlement or otherwise of the proceeds out of which the
17 employer is reimbursed, then, in the absence of other
18 agreement, the employer shall pay such attorney 25% of the
19 gross amount of such reimbursement.

20 If the injured employee or his personal representative
21 agrees to receive compensation from the employer or accept
22 from the employer any payment on account of such compensation,
23 or to institute proceedings to recover the same, the employer
24 may have or claim a lien upon any award, judgment or fund out
25 of which such employee might be compensated from such third
26 party.

1 In such actions brought by the employee or his personal
2 representative, he shall forthwith notify his employer by
3 personal service or registered mail, of such fact and of the
4 name of the court in which the suit is brought, filing proof
5 thereof in the action. The employer may, at any time
6 thereafter join in the action upon his motion so that all
7 orders of court after hearing and judgment shall be made for
8 his protection. No release or settlement of claim for damages
9 by reason of such injury or death, and no satisfaction of
10 judgment in such proceedings shall be valid without the
11 written consent of both employer and employee or his personal
12 representative, except in the case of the employers, such
13 consent is not required where the employer has been fully
14 indemnified or protected by Court order.

15 In the event the employee or his personal representative
16 fails to institute a proceeding against such third person at
17 any time prior to 3 months before such action would be barred,
18 the employer may in his own name or in the name of the
19 employee, or his personal representative, commence a
20 proceeding against such other person for the recovery of
21 damages on account of such injury or death to the employee, and
22 out of any amount recovered the employer shall pay over to the
23 injured employee or his personal representatives all sums
24 collected from such other person by judgment or otherwise in
25 excess of the amount of such compensation paid or to be paid
26 under this Act, including amounts paid or to be paid pursuant

1 to paragraph (a) of Section 8 of this Act, and costs,
2 attorney's fees and reasonable expenses as may be incurred by
3 such employer in making such collection or in enforcing such
4 liability.

5 (c) An action arising under the Biometric Information
6 Privacy Act due to the actions of an employer shall be
7 adjudicated in accordance with this Act.

8 (Source: P.A. 101-6, eff. 5-17-19.)