



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3874

Introduced 1/21/2022, by Sen. Bill Cunningham

SYNOPSIS AS INTRODUCED:

740 ILCS 14/10

740 ILCS 14/15

740 ILCS 14/25

740 ILCS 14/35 new

820 ILCS 305/5

from Ch. 48, par. 138.5

Amends the Biometric Information Privacy Act. Changes the definitions of "biometric identifier" and "written release". Defines "biometric lock", "biometric time clock", "electronic signature", "in writing", and "security purpose". Provides that if the biometric identifier or biometric information is collected or captured for the same repeated process, the private entity is only required to inform the subject or receive consent during the initial collection. Waives certain requirements for collecting, capturing, or otherwise obtaining a person's or a customer's biometric identifier or biometric information under certain circumstances relating to security purposes. Provides that nothing in the Act shall be construed to apply to information captured by a biometric time clock or biometric lock that converts a person's biometric identifier or biometric information to a mathematical representation. Requires the Department of Labor to provide information for employers regarding the requirements of the Act on its website. Amends the Workers' Compensation Act. Provides that nothing in the Act limits, prevents, or preempts a recovery by an employee under the Biometric Information Privacy Act. Effective immediately.

LRB102 24575 LNS 33809 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 25 and by adding
6 Section 35 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. Biometric
9 identifiers do not include information captured and converted
10 to a mathematical representation, including, but not limited
11 to, a numeric string or similar method that cannot be used to
12 recreate the biometric identifier.

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

19 "Biometric lock" means a device that is used to grant
20 access to a person and converts the person's biometric
21 identifier or biometric information to a mathematical
22 representation, including, but not limited to, a numeric
23 string or similar method that cannot be used to recreate the
24 person's biometric identifier.

25 "Biometric time clock" means a device that is used for
26 time management and converts a person's biometric identifier

1 or biometric information to a mathematical representation,
2 including, but not limited to, a numeric string or similar
3 method that cannot be used to recreate the person's biometric
4 identifier.

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

13 "Electronic signature" means a signature in electronic
14 form attached to or logically associated with an electronic
15 record.

16 "In writing" includes, but is not limited to, electronic
17 communications or notices.

18 "Private entity" means any individual, partnership,
19 corporation, limited liability company, association, or other
20 group, however organized. A private entity does not include a
21 State or local government agency. A private entity does not
22 include any court of Illinois, a clerk of the court, or a judge
23 or justice thereof.

24 "Security purpose" means for the purpose of preventing or
25 investigating retail theft, fraud, or any other
26 misappropriation or theft of a thing of value. "Security

1 purpose" includes protecting property from trespass,
2 controlling access to property, or protecting any person from
3 harm, including stalking, violence, or harassment, and
4 includes assisting a law enforcement investigation.

5 "Written release" means informed written consent or, in
6 the context of employment, a release executed by an employee
7 as a condition of employment. Written release includes
8 electronic communications, and such a release or communication
9 by electronic signature of the employee as provided under
10 Section 5-120 of the Electronic Commerce Security Act.

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

12 (740 ILCS 14/15)

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

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

1 guidelines.

2 (b) No private entity may collect, capture, purchase,
3 receive through trade, or otherwise obtain a person's or a
4 customer's biometric identifier or biometric information,
5 unless it first:

6 (1) informs the subject or the subject's legally
7 authorized representative in writing that a biometric
8 identifier or biometric information is being collected or
9 stored;

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

15 (3) receives a written release executed by the subject
16 of the biometric identifier or biometric information or
17 the subject's legally authorized representative.

18 (b-5) If the biometric identifier or biometric information
19 is collected or captured for the same repeated process, the
20 private entity is only required to inform the subject or
21 receive consent pursuant paragraphs (1), (2), and (3) of
22 subsection (b) during the initial collection.

23 (b-10) A private entity may collect, capture, or otherwise
24 obtain a person's or a customer's biometric identifier or
25 biometric information without satisfying the requirements of
26 subsection (b) if:

1 (1) the private entity collects, captures, or
2 otherwise obtains a person's or a customer's biometric
3 identifier or biometric information for a security
4 purpose;

5 (2) the private entity uses the biometric identifier
6 or biometric information only for a security purpose;

7 (3) the private entity retains the biometric
8 identifier or biometric information no longer than is
9 reasonably necessary to satisfy a security purpose; and

10 (4) the private entity documents a process and time
11 frame to delete any biometric information used for the
12 purposes identified in this subsection.

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

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

21 (1) the subject of the biometric identifier or
22 biometric information or the subject's legally authorized
23 representative consents to the disclosure or redisclosure;

24 (2) the disclosure or redisclosure completes a
25 financial transaction requested or authorized by the
26 subject of the biometric identifier or the biometric

1 information or the subject's legally authorized
2 representative;

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

5 (4) the disclosure is required pursuant to a valid
6 warrant or subpoena issued by a court of competent
7 jurisdiction.

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

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

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

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

20 (740 ILCS 14/25)

21 Sec. 25. Construction.

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

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

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

10 (d) Nothing in this Act shall be construed to conflict
11 with the Private Detective, Private Alarm, Private Security,
12 Fingerprint Vendor, and Locksmith Act of 2004 and the rules
13 promulgated thereunder or information captured by an alarm
14 system as defined by that Act installed by a person licensed
15 under that Act and the rules adopted thereunder.

16 (e) Nothing in this Act shall be construed to apply to a
17 contractor, subcontractor, or agent of a State agency or local
18 unit of government when working for that State agency or local
19 unit of government.

20 (f) Nothing in this Act shall be construed to apply to
21 information captured by a biometric time clock or biometric
22 lock that converts a person's biometric identifier or
23 biometric information to a mathematical representation,
24 including, but not limited to, a numeric string or similar
25 method that cannot be used to recreate the person's biometric
26 identifier or biometric information.

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

2 (740 ILCS 14/35 new)

3 Sec. 35. Department of Labor website. The Department of
4 Labor shall provide on its website information for employers
5 regarding the requirements of this Act.

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

8 (820 ILCS 305/5) (from Ch. 48, par. 138.5)

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

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

23 However, in any action now pending or hereafter begun to

1 enforce a common law or statutory right to recover damages for
2 negligently causing the injury or death of any employee it is
3 not necessary to allege in the complaint that either the
4 employee or the employer or both were not governed by the
5 provisions of this Act or of any similar Act in force in this
6 or any other State. Moreover, nothing in this Act limits,
7 prevents, or preempts a recovery by an employee under the
8 Biometric Information Privacy Act.

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

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

25 (b) Where the injury or death for which compensation is
26 payable under this Act was caused under circumstances creating

1 a legal liability for damages on the part of some person other
2 than his employer to pay damages, then legal proceedings may
3 be taken against such other person to recover damages
4 notwithstanding such employer's payment of or liability to pay
5 compensation under this Act. In such case, however, if the
6 action against such other person is brought by the injured
7 employee or his personal representative and judgment is
8 obtained and paid, or settlement is made with such other
9 person, either with or without suit, then from the amount
10 received by such employee or personal representative there
11 shall be paid to the employer the amount of compensation paid
12 or to be paid by him to such employee or personal
13 representative including amounts paid or to be paid pursuant
14 to paragraph (a) of Section 8 of this Act.

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

25 If the injured employee or his personal representative
26 agrees to receive compensation from the employer or accept

1 from the employer any payment on account of such compensation,
2 or to institute proceedings to recover the same, the employer
3 may have or claim a lien upon any award, judgment or fund out
4 of which such employee might be compensated from such third
5 party.

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

20 In the event the employee or his personal representative
21 fails to institute a proceeding against such third person at
22 any time prior to 3 months before such action would be barred,
23 the employer may in his own name or in the name of the
24 employee, or his personal representative, commence a
25 proceeding against such other person for the recovery of
26 damages on account of such injury or death to the employee, and

1 out of any amount recovered the employer shall pay over to the
2 injured employee or his personal representatives all sums
3 collected from such other person by judgment or otherwise in
4 excess of the amount of such compensation paid or to be paid
5 under this Act, including amounts paid or to be paid pursuant
6 to paragraph (a) of Section 8 of this Act, and costs,
7 attorney's fees and reasonable expenses as may be incurred by
8 such employer in making such collection or in enforcing such
9 liability.

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.