

**(740 ILCS 14/) Biometric Information Privacy Act.**

(740 ILCS 14/1)

Sec. 1. Short title. This Act may be cited as the Biometric Information Privacy Act.  
(Source: P.A. 95-994, eff. 10-3-08.)

(740 ILCS 14/5)

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

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

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

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

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

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

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

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

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

(740 ILCS 14/10)

Sec. 10. Definitions. In this Act:

"Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Biometric identifiers do not include writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color. Biometric identifiers do not include donated organs, tissues, or parts as defined in the Illinois Anatomical Gift Act or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency. Biometric identifiers do not include biological materials regulated under the Genetic

Information Privacy Act. Biometric identifiers do not include information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal Health Insurance Portability and Accountability Act of 1996.

Biometric identifiers do not include an X-ray, roentgen process, computed tomography, MRI, PET scan, mammography, or other image or film of the human anatomy used to diagnose, prognose, or treat an illness or other medical condition or to further validate scientific testing or screening.

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

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

"Employment-related deficiency" means violations of the Act related solely to the purpose of timekeeping, ~~g~~ and attendance, payroll, and similar employment-related purposes during the course of employment, which shall be limited to Section 15(a), Section 15(b)(1)(2) and (3), Section 15(d)(1)(3) and Section 15(e)(1) and (2). Employment-related deficiency does not include the intentional or unintentional release of a biometric identifier or biometric information of a subject in the employment context ~~s~~ biometric identifier or biometric information to a third party, which except that but a private entity shall not violate the Act by releasing a biometric identifier or biometric information include to a timekeeping, attendance, payroll or other similar vendor ~~used by a private entity.~~

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

"Subject in the employment context" means any person who works in any capacity for ~~a~~ a private entity including: W-2 employees, contracted workers, temporary employees as defined in 820 ILCS 175/5; interns; volunteers; and applicants.

"Written release" means informed written consent, which may be obtained by electronic or non-electronic means, and is a release executed by an employee as a condition of employment, executed by a subject in the employment context, or is executed by the subject's legally authorized representative, and grants permission to use the subject's biometric identifier or biometric information (collectively, "biometrics") for the purpose of timekeeping, attendance,

**Commented [LKP1]:** Identifying these subsections may create confusion as to whether a violation of each specific subsection, i.e. Section 15(b)(1) and 15(b)(2), constitutes separate causes of actions for purposes of collection \$2k damages per violation.

**Commented [LKP2]:** The way this is now defined, and the way Sec. 20(b) now reads, should provide the distinction we are looking for between technical employment-related violations and data breaches without expressly saying that causes of action related to data breaches are excluded under Sec. 20(b).

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payroll or other similar purposes, in accordance with the Fair Labor Standards Act and to ensure accuracy, avoid potential theft of wages, and ensure the subject is precisely compensated.

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"Written release" means informed written consent, which may be obtained by electronic or non-electronic means, and is or, in the context of employment, a release executed by an employee as a condition of employment, executed by a subject in the employment context, or is executed by the subject's legally authorized representative, and grants of their biometric identifier or biometric information (collectively known as "biometrics") or by the subject's legally authorized representative, granting permission to use the subject's biometric identifier or biometric information (collectively, "biometrics") for the sole purpose of time keeping and attendance in accordance within the Fair Labor Standards Act to ensure accuracy, avoid potential theft of wages, and ensure the subject is precisely compensated.

Commented [LKP3]: Not sure this reference is necessary.

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

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(740 ILCS 14/15)

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

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

Commented [LKP4]: As discussed on our call, keeping this "first" requirement seems inconsistent with the 30-day cure provision.

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

Commented [LKP5R4]: Therefore, if we do not delete "first" I think we need to add something to the new Sec. 20(b) which discusses that a private entity may cure with an alleged Sec. 15(b) violation or otherwise demonstrate compliance by, after receipt of notice of its alleged violation, (1) informing the subject in the employment context or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored; (2) informing the subject in the employment context or the subject's legally

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

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

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

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~~Written consent may be obtained by electronic means.~~

Commented [LKP6]: Added to definition of written release above.

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

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

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

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

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

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

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

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

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

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

(740 ILCS 14/20)

Sec. 20. Right of action.

(a) Any person aggrieved by a violation of this Act, unless otherwise specified in subsection 20(b), shall have a right of action in a State circuit court or as a supplemental claim in federal district court against an offending party, which shall be commenced within two years from the date the aggrieved person notifies, in writing, the private entity which is alleged to have violated this Act of its party is notified in writing of violation. A prevailing party may recover for each violation:

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

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

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

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

**Commented [LKP7]:** As previously written, it was unclear whether the "party" to be notified is the aggrieved person or the private entity who allegedly violated the act.

(b) Any subject in the employment context who suffers or believes they have suffered an employment-related deficiency may not bring an action under subsection 20(a). Instead, any subject in the employment context who suffers or believes they have suffered an employment-related deficiency aggrieved or believed to be aggrieved by an employment-related deficiency related to timekeeping and attendance shall, within 2 years of the alleged violation, provide the private entity which is alleged to have violated this Act written notice indicating that the subject, in good faith, believes the private entity is or was in violation of an employment-related deficiency this Act. Once the private entity has received written notice of the alleged violation of an employment-related deficiency, the private entity has 30 days from the date of receipt of written notice to either cure the alleged employment-related deficiency violation or demonstrate compliance to the subject. During the 30-day notice period, the burden is on the private entity to identify what, if any, provisions of this Act it has violated the alleged employment-related deficiency, and to either cure the alleged violation or demonstrate compliance pursuant to the Act. Further, the private entity is responsible for any alleged employment-related deficiency committed by a third-party vendor that controls the biometric time-tracking or attendance systems, and shall cure the violation or ensure to the subject that the third-party vendor is compliant with the Act. If, within 30 days, the private entity actually cures the violation or demonstrates compliance and provides the subject an express written statement attesting to either the steps taken, or that will be taken, to cure to violation or demonstrates compliance, the steps that will be taken to ensure compliance, no individual claim for damages, pursuant to subsection (b) shall occur. If, the 30-day notice period ends, and a private entity has failed to cure the employment-related deficiency its violation or demonstrate compliance to the subject or their representative, the aggrieved subject in the employment context shall have a right of action in a State circuit court or as a supplemental claim in federal district court against the private entity shall pay to the subject for \$2,000 as in compensatory damages for each Section 15 subsection that the private entity violates and provide to the subject the necessary tax filing documents as required by the Internal Revenue service for receipt of those funds. For each calendar day beyond the initial 30 days that the private entity fails to cure the employment-related deficiency or demonstrate compliance, the private entity will owe the subject \$100. Failure of a subject in the employment context to accept a complete cure or demonstration of compliance will not result in additional payments by the private entity to the subject unless ruled by a court of law that the private entity remains in failed to cure its violation or demonstrate compliance of this Act. A subject in the employment context who prevails in

**Commented [LKP8]:** Again, given that an employer must adhere to the section 15(b) requirements "first" before collecting, the employer presumably could never cure or demonstrate compliance despite the addition of this provision to this bill. Therefore, I am not sure this provides relief as to technical violations of section 15(b) by employers, except if "first" is deleted from section 15(b), as is suggested above.

**Commented [LKP9]:** This would be very harmful to employers

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~~an action brought under this subsection may also recover Attorney's fees shall be provided to the prevailing party. Damages shall not exceed the amount owed in this subsection(b).~~

Commented [LKP10]: I am not clear on what this means.

~~(c)All subjects in the employment context shall be covered under 740 ILCS 174/5 when having made a good faith written notice to the employer. Any and all protections afforded to the subject under 740 ILCS 174/5 shall included by a private entity int their written policy as defined in Section 15(a) of this Act.~~

~~(d) Nothing in subsection (b) shall be construed to limit the rights of a subject in employment context upon an actual data breach.~~

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

Commented [LKP11]: These both seem to complicate rather than clarify

(740 ILCS 14/25)

Sec. 25. Construction.

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

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

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

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

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

~~(f) Nothing in this Act shall be construed to preempt collective bargaining agreements, the Labor Management Act, or the federal Railway Labor Act.~~

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

(740 ILCS 14/30)

Sec. 30. (Repealed).

(Source: P.A. 95-994, eff. 10-3-08. Repealed internally, eff. 1-1-09.)

(740 ILCS 14/99)

Sec. 99. Effective date. This Act takes effect upon

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