

Consumer Privacy Research
H. 121

https://www.americanbar.org/groups/tort_trial_insurance_practice/committees/cyber-data-privacy/the-litigation-landscape/

<https://instituteforlegalreform.com/research/ilr-briefly-a-bad-match-illinois-and-the-biometric-information-privacy-act/>

“The Litigation Landscape of Illinois’ Biometric Information Privacy Act”
(americanbar.org)

Case	Jurisdiction	Amount	Per Class Member	Size of Class	Final Approval
Kusinski, et al. v. ADP LLC	Cook County Illinois	\$25M	\$250	~100,000	2/10/2021
Thome v. Novatime Tech., Inc.	N.D. Ill.	\$4.1M	\$330	62,000	2/11/2021
Jones v. CBC Restaurant Corp. d/b/a Corner Bakery Café	N.D. Ill.	\$3.2M	\$800	4,053	10/22/2020
Martinez v. Nando’s Rest. Group, Inc.	N.D. Ill.	\$1.7M	1,000	1,787	10/28/2020
Parker v. Dabecca Natural Foods, Inc.	Cook County Illinois	\$1M	\$1,300 and \$599	1,160	5/22/2020
Roach v. Walmart, Inc.	Cook County Illinois	\$10M	\$460.00	21,677	Spring 2021
Glynn v. eDriving, LLC et al.	Cook County Illinois	\$2M	\$500	~4,000	12/14/2020
Roberts v. Superior Nut and Candy, Co., Inc.,	Cook County Illinois	725,000	\$565	1,284	3/16/2020
Williams v. Swissport USA, Inc.	Cook County Illinois	\$1,387,740	\$900	~1542	11/12/2020
In re Facebook Biometric Information Privacy Litigation	N.D. Ill.	\$650M	\$350	1.6M	2/26/2021
Bryant v. Loews Chicago Hotel Inc.	N.D. Ill.	\$1.05M	\$249.52/\$1,175	422/804	10/30/2020
Lopez-McNear v. Superior Health Linens, LLC et al.	N.D. Ill.	\$790,000	\$1,000	790	4/27/2021

- Illinois law does not have a statute of limitations, catchall is 5 years.
- IL law is the only BIPA with a private right of action
- AGO recommendations to include private right of action

Litigation landscape of Illinois BIPA law

At the enactment of the BIPA law in IL in 2008, hardly any lawsuits were filed. In 2016, the first class-wide settlement was approved for a lawsuit under the statute. Following this BIPA lawsuits began to pick up steam. In 2019, IL supreme court ruled in *Rosenbach v. Six Flags* established that plaintiffs do not need to show they suffered actual harm in order to sue, all they need to do is claim that the defendant violated one of the states highly technical BIPA provisions. There was a total of nearly 300 BIPA lawsuits filed in IL in 2019, almost four times the total in 2018. Through September of 2021, plaintiffs’ lawyers have filed over 900 cases alleging BIPA violations.

It’s important to note that large corporations and companies need to be held accountable for consumer privacy infractions, which has been the goal of the private right of action in the BIPA law. In this way, the IL BIPA law has been successful in lawsuits against corporations such as the Clearview A.I. However, some believe that the IL BIPA law has become a lucrative opportunity for plaintiffs’ lawyers, with some cases in IL effective large corporations and small businesses alike.

Megan L. Brown, Duane C. Pozza, Kathleen E. Scott, and Tawanna D. Lee, Wiley Rein LLP., (2021 October 12). *IRL Briefly: A Bad Match: Illinois and the Biometric Information Privacy Act*. <https://instituteforlegalreform.com/research/ilr-briefly-a-bad-match-illinois-and-the-biometric-information-privacy-act/>.

Link to PDF Report: <https://instituteforlegalreform.com/wp-content/uploads/2021/10/ILR-BIPA-Briefly-FINAL.pdf>

Clearview AI lawsuit in January of 2020 found Clearview A.I. guilty of building a surveillance tool using biometric identifiers. Their face recognition technology helped Clearview capture more than 3 billion faceprints.

<https://www.aclu.org/cases/aclu-v-clearview-ai>

Meeting with Sarah Aceves, Assistant Attorney General

In asking Sarah about the comparable aspects of the H. 121 to the IL BIPA law, she maintained that there are outweighing positives to having a private right of action in H. 121. We spoke about how due to data infractions businesses and individuals have a potential to lose money and reputation and should have a type of recourse available. I spoke about the potential of a lawsuit effecting a small business in Vermont and Ms. Aceves maintained strongly how unlikely that would be to occur in Vermont, stating how much smaller scale a state Vermont is, and how the law reflects that. She spoke about potentially adding impact thresholds for businesses to further prevent this; if a business doesn't make X amount of money per year, they would be exempt from this type of lawsuit. Ms. Aceves made extremely clear that the goal of this law is to hold large corporations accountable for the engaging in harmful practices against consumers.

Health Data

I addressed Rep. Mulvaney-Stanak's question concerning health data and if data is acquired for free, if the consumer privacy law will protect free consumer data, such as data accumulated through period tracker apps such as Flo and Clue.

Ms. Aceves she would investigate this issue further, but upon both of us looking at the Consumer Privacy Report from the AGO and the actual bill language, free data would fall under the Data Minimization and Limits to Secondary Uses of Data in H. 121. The report has language that implies that a business transaction must occur for the Data Minimization definition to take effect, but the Data Collector definition of the bill outlines that free data collectors such as health apps would fall under the Data Minimization and Limits to Secondary Use sections of H. 121.

Reflecting fears from women in a post-roe era, states such as Washington enacted their consumer privacy law in June of 2022 to address the potential sale of health data. The WA law enacts rights of disclosure and consumer consent regarding the collection, sharing, and use of such information.

<https://www.cnn.com/2023/01/18/politics/washington-state-period-tracking-apps/index.html>

From the National Conference on State Legislatures:

States such as CA, CO, CT, UT, and VA have enacted comprehensive consumer data privacy laws. These laws have several provisions that allow consumers a right to access and delete personal information, and to opt-out of the sale of personal information.

CA: 2018

- Allows consumers to request disclosure of categories and specific pieces of personal information that the business has collected, the purpose for collection, request to be deleted, and a right to opt-out.

CO: July 1, 2023

- Defined various terms related to covered businesses, consumers, and data including defining the term “Controller” as the person or group of people who determine how data is used and processed.

CT: July 1, 2023

- Establishes a framework for controlling and processing personal data; provides responsibilities and privacy protection standards for data controllers and processors; and grants consumers the right to access, correct, delete and obtain a copy of personal data, and opt out of the processing of personal data

UT: December 31, 2023

- Right to know what data is collected and how it will be used, whether its sold, etc.
- Right to be deleted
- Requires specified businesses to safeguard personal data, provide clear information about how that data is used.

VA: January 1, 2023

- Does not apply to state or local government entities
- Law applies to all persons that conduct business in the state and either control or process personal data of at least 100,00 consumers or, derive at least 50% of gross revenue from the sale of personal data and control or process personal data of at least 25,000 consumers.

<https://www.ncsl.org/technology-and-communication/state-laws-related-to-digital-privacy#:~:text=Five%20states%E2%80%94California%2C%20Colorado%2C,of%20personal%20information%2C%20among%20others.>

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- <https://www.jacksonlewis.com/publication/federal-jury-sides-plaintiffs-first-illinois-biometric-information-privacy-act-trial#:~:text=Section%20of%20the%20BIPA,actual%20damages%2C%20whichever%20is%20greater.>

- <https://www.dataprotectionreport.com/2022/11/bipa-year-in-review-where-are-we-now-and-whats-coming-next/>
- <https://www.ncsl.org/technology-and-communication/2023-consumer-data-privacy-legislation>