

Legal Update

January 2019

BREAKING NEWS:

ILLINOIS SUPREME COURT RESOLVES BIOMETRIC INFORMATION PRIVACY ACT LITIGATION AGAINST BUSINESSES

By Carter S. Plotkin

On Friday, January 25, 2019, the Illinois Supreme Court finally resolved the uncertainty regarding who can sue under the Illinois Biometric Information Privacy Act (BIPA), an issue that we discussed in our [February](#) and [November](#) 2018 newsletters.

As a reminder, BIPA limits private entities' collection and usage of biometric identifiers (such as facial geometry, irises, and fingerprints) and requires consent and certain disclosures. Previously, some courts had stated that a business' technical violation of BIPA without some additional harm to monetary or other interests was insufficient to allow a plaintiff to sue. Other courts, however, disagreed and allowed plaintiffs to sue for technical violations alone without claiming additional injury.

The Illinois Supreme Court's decision in [Rosenbach v. Six Flags Entertainment Corp.](#) authoritatively resolves the disagreement on this aspect of BIPA. The Court concluded that a person is "aggrieved" under BIPA and can sue for damages of at least \$1,000 (at least \$5,000 for reckless or intentional violations), plus attorneys' fees, whenever a business requests, requires, or uses a person's biometric information without following BIPA's precise procedures—even if the business commits a merely technical violation of the statute without economic or other personal harm to the plaintiff. The ruling will likely impact all ongoing BIPA lawsuits, including the well-known [Facebook class action](#) pending in California.

Given that the Illinois Supreme Court's decision expands the potential number of plaintiffs under BIPA, businesses and other organizations that are collecting biometric data or considering the use of biometric data should consider taking additional precautions and consult with legal counsel to ensure compliance and minimize the risk of significant liability.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Carter S. Plotkin, 312-701-6819, cplotkin@fvldlaw.com, or your regular FVLD contact.

FVLD