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Litigation Update

7th Circuit Confirms BIPA Amendment Has Retroactive Application

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On April 1, 2026, the U.S. Court of Appeals for the 7th Circuit issued [a long-awaited opinion concerning the proper construction of](#) an August 2024 Amendment (SB 2979)¹ to the Illinois Biometric Information Privacy Act (BIPA). The court held that the amendment limiting potential damages was a procedural change to the law and therefore must be applied retroactively to cases pending when the amendment was enacted. This decision could significantly impact the legal and business landscape in Illinois, as detailed in this client alert.

The August 2024 BIPA Amendment: Potential BIPA Damages Are Limited

[SB 2979](#),² which passed the Illinois Legislature in May 2024³ and was then signed into law in August 2024, amended BIPA to clarify that any person whose biometric identifier or biometric information is “scanned” by a private entity (regardless of its frequency) may only recover damages for **one** violation.

SB 2979 contained the following key language:

- “A private entity that, in more than one instance, collects, captures, purchases, receives or otherwise obtains the **same** biometric identifier or biometric information from the **same** person using the **same** method of collection in violation of BIPA only commits **one single violation**, for which the aggrieved party is entitled to, at most, **one recovery**.”⁴
- “A private entity, that in more than one instance, discloses, rediscloses, or otherwise disseminates the **same** biometric identifier or biometric information from the **same** person to the **same** recipient using the **same** method of collection in violation of BIPA only commits **one single violation**, for which the aggrieved party is entitled to, at most, **one recovery**.”⁵

While SB 2979 clarified that damages under BIPA should be assessed per person rather than per scan, the amendment lacked any express language regarding retroactivity.⁶ As a result, plaintiffs generally argued up to now that the amendment only applies prospectively from the date of its enactment, while defendants have argued that it applies retroactively. These disparate viewpoints forced trial courts to take on a statutory interpretation role with significant financial stakes at play.

The Underlying District Court Cases: The BIPA Amendment Is Not Retroactive

Three district courts assessing how to apply SB 2979 concluded that the amendment should only apply prospectively because it was substantive in nature but then certified the question for interlocutory appeal under 28 U.S.C. § 1292(b).

In *Reginald Clay v. Union Pacific Railroad Company*, U.S.D.C. N.D. Ill. Case No. 1:24-cv-04194, a commercial truck driver alleged in a lawsuit that his employer violated Section 15(b) of BIPA by requiring him and other employees to scan their fingerprints when entering and exiting the company's facilities because the employer did not disclose what it did with this information or how it would be stored.⁷ On November 4, 2024, the employer moved for partial summary judgment, arguing that under SB 2979, the plaintiff was entitled, at most, to recover for a single BIPA violation rather than a "per scan" violation.⁸ Six months later, on April 10, 2025, the district court denied the motion, concluding that the BIPA amendment was substantive rather than procedural and thus did not apply retroactively to a claim filed before its enactment.⁹ On June 10, 2025, the district court granted a motion by the defendant for certification of its partial summary judgment order for interlocutory appeal.¹⁰

Similarly, in *Brandon Willis v. Universal Intermodal Services, Inc., et al.*, U.S.D.C. N.D. Ill. Case No. 1:21-cv-01716, an employee filed a lawsuit under BIPA alleging that his employer and related entities violated the statute when they collected fingerprints from employees as a requirement for entry to employer facilities because the employer did not provide a BIPA-compliant notice and obtain requisite employee consent. On April 2, 2025, the district court entered an order resolving cross-motions for summary judgment, and concluded that SB 2979 was not retroactive.¹¹ On July 11, 2025, the court granted the defendant's motion to certify its summary judgment order for interlocutory appeal, recognizing as part of its analysis that the question of retroactivity "makes an enormous difference" as a prospective application "could jeopardize [the defendants'] ability to remain in business" given the high potential damages.

In *John Gregg v. Central Transport LLC*, U.S.D.C. N.D. Ill. Case No. 1:24-cv-01925, the plaintiff likewise alleged that his employer violated BIPA (specifically sections 15(b), (c), and (d)), when it collected his fingerprints through a biometric time clock.¹² Unlike the *Clay* and *Willis* cases, however, the district court initially concluded in November 2024 that SB 2979 did apply retroactively and limited the plaintiff to a single recovery.¹³ This had the net effect of bringing the plaintiff's damages below the \$75,000 threshold required for federal jurisdiction.¹⁴ The plaintiff moved for reconsideration on December 11, 2024. On March 21, 2025, the court vacated its previous decision and, consistent with the district court judges in *Clay* and *Willis*, held that the amendment was substantive and not subject to retroactive application. The court then certified an interlocutory appeal of its order on the motion for reconsideration.

7th Circuit Reverses the District Courts

On September 18, 2025, the 7th Circuit consolidated the *Clay*, *Willis* and *Gregg* appeals for oral argument and decision.¹⁵ The 7th Circuit heard oral argument on February 12, 2026, and on April 1, 2026, issued its opinion, concluding that the August 2024 BIPA amendment was only a procedural change to the law and therefore must be applied retroactively to cases pending when the amendment was enacted.

In reaching its decision, the 7th Circuit noted that because the plain text of SB 2979 was silent on its temporal reach, it was necessary to look for guidance in Section 4 of the Illinois Statute on Statutes, which contains an express savings clause.¹⁶ Section 4 in turn requires consideration of whether amendments constitute substantive (i.e., affecting the rights, duties and obligations of people) or procedural (i.e., setting rules that prescribe steps for having a right or duty judicially enforced) changes in law.¹⁷ The Supreme Court of Illinois has held that remedial changes are procedural, not substantive.¹⁸ In addition, the 7th Circuit reported in its opinion that "Illinois courts have consistently ruled that they 'can apply retroactively statutory changes to procedural or remedial provisions, whether they are outright repeals or amendments.'"¹⁹

With this framework in mind, the 7th Circuit evaluated the text and structure of the amendment and concluded that SB 2979 was a remedial change, making it “procedural” and therefore subject to retroactive application.²⁰ To support its decision, the court pointed out that the amendment did not change Section 15, which sets substantive standards for liability under BIPA, and instead only changed Section 20, which governs liquidated damages.²¹ The court also noted that the amendment did not alter Section 20(a), which creates a cause of action to sue for violations of Section 15, and that the plain language of the amendment focuses on remedies rather than a cause of action.²²

Notably, the 7th Circuit expressly rejected an argument commonly advanced by the plaintiffs’ bar since the amendment’s enactment, determining that construing the amendment to apply retroactively was not unconstitutional under the Due Process Clause. Specifically, the 7th Circuit held that “the amendment to Section 20 of BIPA raises no constitutional concerns[,]” as “damages under BIPA are likely discretionary” and “this amendment decreases, rather than increases, the monetary penalties BIPA imposes on private entities.”²³ Further, the 7th Circuit reiterated the Supreme Court of Illinois’ statement in *Dardeen v. Heartland Manor, Inc.*, 710 N.E.2d 827, 832 (Ill. 1999), that “it ‘has been well settled for over a century’ in Illinois that ‘a plaintiff has no vested right to a particular . . . remedy.’”²⁴

The 7th Circuit also clarified that its procedural/retroactive application holding squares with the Supreme Court of Illinois’ 2023 holding in *Cothron v White Castle Sys., Inc.*, 216 N.E.3d 918 (Ill. 2023) because, inter alia, the *Cothron* opinion did not purport to interpret Section 20 and expressed significant concern about how BIPA litigation was playing out given “there is no language in the Act suggesting legislative intent to authorize a damages award that would result in the financial destruction of a business.”²⁵ Further supporting this latter point, the 7th Circuit noted in its April 1, 2026 opinion that the text of the amendment limiting plaintiffs “to, **at most**, one recovery” directly addresses the excessive damages concern expressed in *Cothron*.²⁶

Four Potential Impacts

The 7th Circuit’s April 1, 2026, decision may have far-reaching, significant effects.

First, for businesses currently facing BIPA litigation, no matter the filing date, the confirmed universal shift from a “per-scan” theory of liability to a single-recovery-per-person framework materially narrows the scope of potential damages. Practically, this means that BIPA cases that plaintiffs and their attorneys may have once valued in the tens or hundreds of millions of dollars based on alleged repeated biometric scans may actually be worth far less. That in turn may lead to more frequent settlements at lower dollar values, or even more cases moving toward trial, where the risk of excessive damages awards has been mitigated.

Second, businesses operating in Illinois or deploying technology to Illinois involving collection, storage and/or transfer of biometric identifiers or biometric information may reassess prior operations calculations following the 7th Circuit’s ruling, benefiting Illinois’ economy and consumers. The curbing of potential damages exposure for alleged BIPA violations to a per-person basis may lead businesses that left or may have considered leaving the state because of potential “annihilative liability,”²⁷ as well as businesses that opted to avoid selling certain products or deploying certain technology into Illinois, to reverse those decisions under a simple business judgment calculus given the greater predictability of potential damages exposure.

Third, insurance-related friction is likely to arise. In general, policy and coverage determinations are evaluated based on the facts and law at the time of the relevant settlement, which should limit attempted retroactive recoupment efforts. However, this ruling will undoubtedly impact ongoing coverage litigation and future underwriting practices. Among other things, there may be an increase in insurer-insured litigation regarding reasonableness of prior settlements, indemnity obligations and even attempts to revisit or recoup prior coverage payments.

Fourth, the significant reduction of potential aggregate damages for BIPA claims may further reduce the number of litigations filed under BIPA, as contingency lawyers and litigation financiers will have to more closely examine whether it is financially practicable for them to initiate such litigations and pursue them to conclusion. That said, while overall BIPA litigation volume may decrease, it will likely not be eliminated, especially as biometric information collection becomes more standardized, both as a security feature and as a focus of emerging technologies.

What Businesses Should Do Now

In light of the 7th Circuit's opinion, businesses operating in Illinois or deploying technology to Illinois involving collection, storage and/or transfer of biometric identifiers or biometric information should reevaluate pending litigation and reassess operational choices tied to biometric data practices. Businesses that previously opted to avoid selling certain products or deploying certain technology can now undertake a business judgment calculus with greater predictability of potential damages exposure. Companies should also consult with knowledgeable counsel to review existing risk management strategies and assess insurance coverage. Taking these proactive steps in an environment where BIPA litigation continues should allow companies to better align their practices with current law and mitigate potential exposure.

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¹ Order re: *Petitions for Permission to Appeal*, Filing 14, *Reginald Clay v. Union Pacific Railroad Company*, No. 25-2185 (7th Cir. Sept. 18, 2025), <https://dockets.justia.com/docket/circuit-courts/ca7/25-2185/7464863-2> (last visited Apr. 3, 2026); *Clay v. Union Pac. R.R. Co.*, No. 25-2185, 2026 WL 891902 (7th Cir. Apr. 1, 2026).

² Argument Reset Notice, Filing 50, *Reginald Clay v. Union Pacific Railroad Company*, No. 25-2185 (7th Cir. Dec. 23, 2025), <https://dockets.justia.com/docket/circuit-courts/ca7/25-2185>; S.B. 2979, 103rd Gen. Assemb., Reg. Sess. (Ill. 2024).

³ Aaron Charfoos et al, Illinois Legislature Passes Major BIPA Amendment, Paul Hastings Insights <https://www.paulhastings.com/insights/ph-privacy/illinois-legislature-passes-major-bipa-amendment> (May 17, 2024).

⁴ 740 ILCS 14/20(b)(emphasis added).

⁵ *Id.* at (c) (emphasis added).

⁶ *Id.*

⁷ *Clay v. Union Pac. R.R. Co.*, No. 24 CV 4194, 2025 WL 1651529, at *1 (N.D. Ill. June 10, 2025).

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⁸ *Id.* at *2.

⁹ *Id.*

¹⁰ *Id.* at *3.

¹¹ *Willis v. Universal Intermodal Servs., Inc.*, No. 21 C 1716, 2025 WL 2549234, at *1 (N.D. Ill. July 14, 2025).

¹² *Gregg v. Cent. Transp. LLC*, No. 24-cv-01925, 2024 WL 4766297, at * 1 (N.D. Ill. Nov. 13, 2024).

¹³ *Id.* at *1–2.

¹⁴ *Id.* at *1.

¹⁵ Order Re: Petitions for Permission to Appeal, *Clay v. Union Pac. R. R. Co.*, Nos. 25-2185 et al consl. (7th Cir. Sept. 18, 2025).

¹⁶ See 5 Ill. Comp. Stat. 70/4 (2025).

¹⁷ *Perry v. Dept. of Fin. And Prof. Reg.*, 106 N.E.3d 1016, 1033–1034 (Ill. 2018).

¹⁸ *Dardeen v. Heartland Manor, Inc.*, 710 N.E. 2d 827, 832 (Ill. 1999).

¹⁹ *Clay Consl.* at *4 (citing *People v. Glisson*, 782 N.E.2d 251, 257 (Ill. 2002)).

²⁰ *Clay* at *4.

²¹ *Id.* at *5.

²² *Id.*

²³ *Id.* at *7.

²⁴ *Id.* at *7.

²⁵ *Id.* at *5 (quoting *Cothron v. White Castle Sys., Inc.*, 216 N.E.3d 918 at 929 (Ill. 2023) as modified on denial of reh'g (July 18, 2023)).

²⁶ *Clay* at 5 (emphasis added).