

April 5, 2024

The Honorable Bill Cunningham
Illinois State Senate
309-J Capitol Building
Springfield, IL 62706

RE: SB 2979

Dear Senator Cunningham:

We the undersigned write to commend your leadership and express our support for SB2979, which would reform the state's Biometric Information Privacy Act (BIPA) by making fair and common-sense changes to the statute's liability guidelines. This is a crucial moment for employers and businesses around the state due to the continued flood of BIPA litigation against businesses and employers who use biometric information for a variety of safety, security, and identification purposes. The vague statutory language of BIPA and courts' expansive interpretations of the law pose a grave threat not only to these employers and businesses, but also to the economic prosperity of the state.

After several multi-million-dollar settlements in BIPA class action suits, the Illinois Supreme Court's decision in *Cothron v. White Castle System, Inc.* last year placed the state's businesses and employers in an unsustainable and crippling position. That ruling held that each instance of biometric information captured constituted a separate violation of the law – reasoning that could have left the defendant open to an estimated \$17 billion in damages, according to the dissenting opinion. At the same time, the *Cothron* court also agreed that damages in BIPA cases are discretionary, but did not opine on the relevant considerations for courts to use in exercising discretion.

In response to the ramifications and potential damages stemming from the *Cothron* decision, SB2979 would limit the number of claims that can be brought under each section of the statute as to an individual. Thus, for example, even if an individual used a certain biometric technology repeatedly, they could only recover for their biometric information being collected without their informed consent one time, rather than for each instance. Additionally, the bill modernizes BIPA consent requirements by explicitly recognizing that consent can be granted by electronic signatures, which are now widespread but were not at the time of BIPA's enactment in 2008. These important reforms reflect today's realities given biometric technological advances and companies' adoption of these innovations to streamline operations, increase productivity, promote safety and security, and remain competitive in a global economy.

While enactment of SB2979 would certainly mark a significant and impactful reform to BIPA, there is more important work the Legislature must do to address BIPA's other

shortcomings and ambiguities. BIPA was enacted in 2008 as a consumer protection law to guard against the unscrupulous exposure of consumers' biometric information. Since 2015, however, the law has been weaponized against Illinois businesses and employers in cases where there is no harm to plaintiffs. The Legislature must reassess the intended goals of BIPA and consider whether the statute as it is currently being used meets those aims. More specifically, the Legislature must investigate the concerns of the Illinois business community to ensure that BIPA is tailored to protection of consumers and deterrence rather than wreaking cataclysmic financial consequences on Illinois businesses and employers in the absence of any actual harm. Importantly, the Legislature must also find solutions and seek reforms that balance personal privacy concerns with use of technology that enable businesses to thrive and make investments with confidence.

Thank you again for your leadership on this issue. We urge all members of the senate to prioritize and vote in favor of SB2979 when it is considered on the floor.

Sincerely,

Shannon Meade, Executive Director
Littler Workplace Policy Institute

Tyler Diers, Executive Director, Midwest
TechNet