

# Now & Next

Cybersecurity & Privacy Alert

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## Two courts find that BIPA Reform Bill applies to previously filed cases

By Maggie Borse and John Ruskusky

Following the enactment of the BIPA Reform Bill, some questioned its application to then-pending BIPA cases. Now, at least two Illinois courts have found that it applies.



### What's the impact?

- Two Illinois courts (one federal and one state) have found that the BIPA Reform Bill applies to pending BIPA cases and have consequently transferred or dismissed cases that no longer meet the minimum threshold damages for a particular court.
- The federal court decision expressly found that the BIPA Reform Bill merely clarifies rather than alters BIPA and, therefore, applies to existing litigation as if the statute were clear from the date of BIPA's enactment.

On August 2, 2024, Governor J.B. Pritzker signed the BIPA Reform Bill into law as [Public Act 103-0769](#) (the "Bill"), which clarified that a private entity that more than once collects or discloses a person's biometric identifier or biometric information in violation of the Act "has committed a

single violation [of sections 15(b) and 15(d) of BIPA] for which the aggrieved person is entitled to, at most, one recovery . . .”

After the enactment of the Bill, some questioned whether the change in statutory damages would apply to then-pending cases. Two Illinois courts have weighed in favorably for business owners on the issue, finding that the Bill does apply to pending cases.

### ***John Gregg v. Central Transport LLC***

One court specifically found that the Bill clarifies BIPA rather than alters it and, therefore, applies to pending cases as if the statute had been originally written in accordance with the Bill. In *John Gregg v. Central Transport LLC*,<sup>1</sup> Judge Elaine E. Bucklo granted the defendant a motion to dismiss for lack of subject matter jurisdiction, finding that the jurisdictional requirement of \$75,000 could not be met in this single-plaintiff BIPA case following the enactment of the Bill. Under Illinois law, where an amendment is “a clarification of the prior statute,” it “must be accepted as a legislative declaration of the meaning of the original Act.”<sup>2</sup> In determining whether the Bill was a clarification of BIPA applicable to currently pending litigation, Judge Bucklo reasoned that the Illinois Supreme Court had expressly invited the legislature to “make clear its intent regarding the assessment of damages under [BIPA].”<sup>3</sup> Following this reasoning, Judge Bucklo found that the legislature’s prompt limiting of damages under BIPA clarified that plaintiffs are limited to a single recovery for violations caused by the collecting or disseminating of the same biometric identifiers or information via the same method. Therefore, Judge Bucklo found that the Bill was a clarification of BIPA that applies to currently pending cases.

### ***Ulysses Ballard v. Freedman Seating Company***

Similarly, in *Ulysses Ballard v. Freedman Seating Company*,<sup>4</sup> Judge Catherine A. Schneider recently transferred a BIPA case out of the Law Division and to the First Municipal District for its failure to meet the \$30,000 minimum damages threshold required for jurisdiction in the Law Division following the enactment of the Bill. Defendant, in that case, argued that the Bill clarifies and explains the Illinois General Assembly’s intent regarding the assessment of damages under BIPA and, therefore, is properly applied to all cases pending on the date of the enactment. Judge Schneider’s Order granting defendant’s motion to transfer the case appears to adopt this reasoning.

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<sup>1</sup> *John Gregg v. Central Transport LLC*, No. 24 C 1925 (N.D. Ill. Nov. 13, 2024).

<sup>2</sup> *K. Miller Constr. Co. v. McGinnis*, 938 N.E.2d 471, 482 (Ill. 2010).

<sup>3</sup> *Cothron v. White Castle System, Inc.*, 216 N.E.3d 918, 929 (Ill. 2023).

<sup>4</sup> *Ulysses Ballard v. Freedman Seating Company*, No. 2024 L 004606 (Cir. Ct. Cook Cty. Oct. 2, 2024).

## **Prioritize BIPA compliance**

While these rulings give businesses some breathing room, organizations must continue to prioritize compliance with BIPA's requirements surrounding the collection, use, and storage of biometric identifier information. Nixon Peabody's Biometric Information Privacy Act team regularly helps businesses create and assess their compliance plans, respond to violation notices, and reduce litigation risks.

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