

Publications

April 3, 2026 • Updates

Seventh Circuit Court of Appeals Holds That BIPA Amendment Limiting Damages Applies Retroactively

Key Takeaways:

- The Seventh Circuit held that the BIPA damages cap applies retroactively to pending cases. The court held the 2024 amendment is procedural and limits plaintiffs to a single statutory recovery per person, even in lawsuits filed before the amendment took effect.
- The decision significantly reduces potential exposure in existing BIPA litigation. By rejecting per-violation damages for pending cases, the ruling curbs the outsized liability risk that followed *Cothron* and reshapes how courts may evaluate damages and class claims.
- Companies facing BIPA claims should revisit damages assumptions, evaluate opportunities to narrow claims or revisit prior rulings and adjust settlement strategy in light of reduced aggregate risk.

In a highly anticipated and significant opinion impacting pending lawsuits, the Seventh Circuit Court of Appeals reversed three district court orders and held that a 2024 amendment to the Illinois Biometric Information Privacy Act (BIPA) applies retroactively. The court's opinion — finding the amendment to be procedural rather than substantive — significantly affects the quantum of damages claimants may seek in BIPA cases existing when the amendment was signed into law. While plaintiffs have argued each violation of law results in a separate statutory damage, and the amendment only applied to prospective lawsuits, the court clarified that statute entitling a claimant to just one recovery of statutory damages applies retrospectively as well.

As a result, the decision substantially reduces potential damages exposure in pending BIPA cases and is likely to reshape litigation strategy, settlement dynamics and class certification arguments going forward. Read on for key takeaways and what this means for businesses facing BIPA claims.

Background – A BIPA Primer

The General Assembly unanimously adopted BIPA in 2008 in response to growing concern among the public about the collection and use of biometrics.[1] Biometrics are

Related People

- Mark A. Olthoff

Related Capabilities

- Biometric Privacy Law
- Class Action & Multidistrict Litigation
- Privacy Litigation

“biologically unique” personal identifiers that include “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.” To address the public’s concern, the Act regulates how private entities may collect and handle biometric data and provides a private cause of action for any person “aggrieved by” a violation of the statute. A successful plaintiff can recover the greater of actual damages or statutory damages of \$1,000 for each negligent violation and \$5,000 for each reckless or willful violation.

The Cothron Opinion

In *Cothron v. White Castle System, Inc.*, the Illinois Supreme Court (on a certified question from the Seventh Circuit) held that BIPA section 15(b) and 15(d) claims accrue each time a private entity scans a person’s biometric identifier and each time a private entity transmits such a scan to a third party; that is, each statutory violation supports a separate claim. In the majority’s opinion, it noted the potential for large damage awards but determined that was an issue for the legislature not the court.

2024 Amendment

Following the *Cothron* decision, apparently taking the cue from the court’s opinion, the Illinois legislature considered the potential effect that large, potentially annihilative damage awards could have on businesses in Illinois. Thus, the legislature passed and the governor signed into law an amendment to BIPA section 20 effectively capping BIPA statutory damage awards to a “per person” rather than “per violation” recovery. Under the amendment, a plaintiff who potentially alleges hundreds or thousands of claims due to violations of the statute is only entitled to one recovery. However, the legislation did not specifically address whether it applies prospectively or retroactively.

Seventh Circuit Decision

The Seventh Circuit consolidated three appeals from the Northern District of Illinois. Each of those lower court decisions had concluded the 2024 amendment did not apply retroactively to lawsuits pending at or before the amendment went into effect. In reversing each of the cases, the Seventh Circuit disagreed and held that, because the BIPA amendment was a remedial change to the statute, Illinois courts should apply it to cases pending when enacted (not simply later filed cases).

In its lengthy opinion, the court discussed the manner in which Illinois courts determine whether statutes apply retroactively. Under Illinois law, remedial changes to statutes are procedural and not substantive. Because the BIPA section 20 amendment impacts only the statutory damages available and does not change BIPA’s substantive standards of liability, the court found that the amendment applies retroactively.

What This Means for Businesses Facing BIPA Claims

This decision meaningfully resets the risk landscape for BIPA litigation. By limiting statutory damages to a single recovery per person and applying that limitation to pending cases, the Seventh Circuit significantly reduces potential exposure in existing matters and will likely influence how parties approach motion practice, class certification and settlement going forward. Businesses facing BIPA claims should reassess their litigation strategy and valuation in light of this ruling, particularly in cases premised on per-violation damages theories. For more information about this decision and its implications, please contact the author of this alert or your Polsinelli attorney.

[1] 740 Ill. Comp. Stat. 14/5(d)-(e).

