

May 27, 2016

Via email

Senator Terry Link
Illinois General Assembly
senator@link30.org

Re: House Bill 6074 Senate Amendment 1 (biometric privacy) – oppose

Dear Senator Link:

Thank you for deciding earlier today not to move House Bill 6074 Senate Amendment 1. This bill would have repealed most of the critical protections now provided by the Illinois Biometric Information Privacy Act (BIPA) of 2008. *See* 740 ILCS 14/1. We write to explain for the record our support for the Illinois BIPA and our opposition to this bill and to any similar bills.

A. The current Illinois BIPA is a necessary protection of our biometric privacy.

We strongly support the current Illinois BIPA. This statute's findings explain how the use and misuse of biometrics is a grave menace to the personal privacy of everyone:

The use of biometrics is growing in the business and security screening sectors Biometrics are unlike other unique identifiers that are used to access finances or other sensitive information. For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, [and] is at heightened risk for identity theft An overwhelming majority of members of the public are weary of the use of biometrics when such information is tied to finances and other personal information. The full ramifications of biometric technology are not fully known.

See 740 ILCS 14/5.

We would add that biometric identifiers, unlike other unique identifiers, are readily accessible to other people. This is especially true of our faces. Most people must expose their faces to other people in order to participate in society. When we do so, there is very little that we can do as individuals to prevent other people from capturing the images of our faces – remotely, secretly, cheaply, and automatically. Rapidly changing technologies aggravate the problem. New cameras can capture our facial images at ever greater distances and with ever higher precision. New computer programs can match our facial images with ever greater accuracy. New interoperability systems allow this facial matching across ever more databases. In sum, facial recognition technologies are an especially serious threat to our biometric privacy.

To prevent these harms, the Illinois BIPA generally requires private entities to obtain consent from a person before collecting or disclosing their biometric identifiers. 740 ILCS 14/15(b) & (d). It also requires private entities that possess such identifiers to destroy them upon the

satisfaction of the purpose for collection, and in no event more than three years after the entity's last interaction with the subject of the identifiers. *Id.* at /15(a). Further, private entities must securely store such identifiers. *Id.* at /15(e). Parties injured by violation of these rules may bring a private cause of action. *Id.* at /20.

The statute defines protected "biometric identifiers" to include "a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS 14/10. This definition excludes, among other things, "photographs." *Id.*

B. The bill would undo most of the BIPA's protections of our biometric privacy.

HB 6074 SAM 1 would repeal nearly all of the benefit of the Illinois BIPA. It would do so by narrowly redefining the key term "biometric identifiers," so that most actual biometric identifiers would cease to be statutorily protected biometric identifiers.

First, the bill would modify the excluded word "photograph" with the phrase "physical or digital." This would result in the exclusion of digital photographs, as well as physical photographs, from the protection of the statute.

This would be a great step backwards for biometric privacy. For example, reasonable people expect that when we walk into a store, the owner is not capturing the images of our faces with digital cameras, figuring out who we are based on automated facial recognition analysis, rapidly mining data about us, using that data to tailor sales to us as we move about the store, and keeping all of this information forever to use in follow-up targeted advertising and to sell it for profit to other merchants and to the government. Rather, we should all be able to enjoy the anonymity of a crowded place without such technological intrusion. If the bill passes, the people of Illinois would lose this privacy.

Second, the bill would amend the law so that "biometric identifiers" do not include "information *derived from* items or procedures excluded under the definition of biometric identifiers." (Emphasis added.) Thus, since digital photographs are excluded under the definition of biometric identifiers, any information derived from digital photographs would no longer be included as protected biometric identifiers. Since nearly all retina, iris, and facial recognition systems operate by first taking a digital photograph, this bill would thus exclude nearly all such biometric data from the law's protection. We cannot emphasize this point enough: the vast majority of biometric systems, particularly iris, retina, and facial recognition systems, work by taking a digital image first, and then deriving information from that image. By excluding information derived from digital photographs from the definition of "biometric identifiers," the bill cuts all of the protections the law originally gave to iris, retina, and face geometry information.

Third, the bill would narrowly define the term "scan," which appears twice in the list of terms included within the statute's definition of biometric identifier: "a retina or iris scan . . . or scan of hand or face geometry." Specifically, the bill would define scan as "data resulting from an in-person process whereby a part of the body is traversed by a detector or an electronic beam." But this strange and restrictive definition of "scan" applies to almost no methods for gathering biometrics in widespread use. In particular, as we explained above, most biometric "scanners"

are actually digital cameras which process the resulting image, and they rarely “traverse” a part of the body. Further, no biometric scanner that we know of uses electron beams to collect any sort of information. (There are scanners that record body geometry by sweeping a beam of light across the target, but a beam of light and an electronic beam are both technical terms which mean fundamentally different things.)

In short, the bill would strip the public of nearly all biometric privacy from scans of their retinas, irises, hands, and face, by (1) excluding digital photographs, (2) excluding information derived from digital photographs, and (3) narrowly defining scans. As a result, this bill would effectively reduce BIPA to protecting only fingerprints and voiceprints.

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Thank you for considering our objections to HB 6074 SAM 1. If you have any questions, please do not hesitate to email Adam Schwartz of the EFF at adam@eff.org, or to call him at (415) 436-9333, extension 176.

Respectfully submitted,

Electronic Frontier Foundation (by Adam Schwartz, Senior Staff Attorney)
Alvaro Bedoya, Center on Privacy & Technology at Georgetown Law*
American Civil Liberties Union of Illinois (by Mary Dixon, Legislative Director)
Center for Digital Democracy (by Jeff Chester, Executive Director)
Consumer Federation of America (by Susan Grant, Director of Consumer Protection)
Consumer Watchdog (by John M. Simpson, Privacy Project Director)
Illinois PIRG (By Abe Scarr, Director)
Privacy Rights Clearinghouse (By Beth Givens, Executive Director)
Restore the Fourth (John Bumstead, Treasurer)
U.S. PIRG (By Ed Mierzwinski, Consumer Program Director)
World Privacy Forum (by Pam Dixon, Executive Director)

cc: Senator Kwame Raoul, Chairperson, Senate Judiciary Committee
Senator Jason A. Barickman, Minority Spokesperson, Senate Judiciary Committee
Senator Michael E. Hastings, Vice Chairperson, Senate Judiciary Committee
Senator Michael Connelly, Member, Senate Judiciary Committee
Senator William R. Haine, Member, Senate Judiciary Committee
Senator Don Harmon, Member, Senate Judiciary Committee
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* Affiliation for identification purposes only