

March 9, 2021

## OPPOSE HB559 AND HB560

Dear Members of the IL House of Representatives,

The undersigned civil rights, privacy and education advocacy organizations respectfully write to express our strong concerns with HB559 and HB560, which propose significant amendments weakening the Illinois Biometric Information Privacy Act (“BIPA”). We firmly believe that a person’s biometric information deserves the utmost protection. Yet, both bills effectively gut BIPA of the privacy protections it offers Illinois residents.

First, both bills significantly limit the types of information protected under BIPA. By redefining biometric information to exclude any templates created by biometric identifiers, HB559 and HB560 fail to recognize the harm done by biometric technology. The purpose of BIPA is to give people a choice of whether they want their faces scanned or their fingerprints taken. The proposed language under HB559 and HB560 strips people of this choice entirely anytime a face is scanned to create a face-print. Furthermore, given how biometric technology works, this would implicate all scans of biometric information. As such, this change would effectively exempt companies from BIPA liability when using biometric technology. This would create an environment that allows companies to conduct widespread facial recognition on all people, including consumers and employees. The undersigned organizations have long opposed such systems of mass surveillance because of the significant dangers they pose to people’s privacy, civil rights and civil liberties.

Second, HB559 makes it easier for private entities to bypass privacy protections for biometric information. By creating a right to cure, the bill offers private entities a “get out of jail free card” for BIPA violations. This mechanism allows companies to “correct” the harm done by their unlawful collection of biometric information within 30 days and avoid any liability. Yet, this language fails to acknowledge the harm done to possible plaintiffs when their biometric information is collected in the first place, without their knowledge and consent.

Similarly, by placing an additional requirement on plaintiffs to prove “actual harm,” HB559 fails to recognize the concrete injury that occurs from the initial unlawful collection of one’s biometric information. Both Illinois and Federal courts have recognized that once someone’s biometric information is collected without their knowledge and consent, such collection is in and of itself an “injury” that is “real and significant.” *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 34 (Jan 25, 2019); *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1273 (9th Cir. 2019).

Finally, when a violation of BIPA does occur, both bills severely limit the ability for someone to enforce the law and hold companies accountable. Both HB559 and HB560 remove the law’s reliable private right of action. Instead, they replace this effective enforcement mechanism with historically ineffective and overly burdensome administrative channels. Moreover, both bills offer large carve-outs shielding employers from liability. By creating an exemption that takes away the right of all employees covered by a collective bargaining agreement to file a suit under BIPA, HB559 and HB560 unfairly treat people differently based on their employment status. Such a

carve out also risks creating an imbalance within the workplace that can justify invasive collection and retention policies for biometric information by employers. Everyone's biometric information deserves the utmost privacy protection, regardless of their employment status, bargaining unit, or employer requirements.

We urge you to oppose HB559 and HB560, and to be mindful of the harmful effects that passage of these bills would have for the biometric information privacy of Illinoisans.

Sincerely,

ACLU of Illinois

Electronic Frontier Foundation

Illinois Families for Public Schools

Illinois PIRG

Parent Coalition For Student Privacy

SEIU Healthcare