



**International
Health, Racquet &
Sportsclub Association**

Delegate Dereck Davis
Chair, House Economic Matters Committee
6 Bladen Street
Annapolis, MD 21401

February 24, 2020

RE: House Bill 307 Biometric Identifiers and Biometric Information Privacy

Dear Members of the House Economic Matters Committee:

My name is Jeff Perkins. I am the Assistant Vice President of Government Relations for the International Health, Racquet & Sportsclub Association (IHRSA), the leader in education, research and advocacy for the health and fitness industry, representing health clubs and fitness businesses worldwide, as well as nearly 700 clubs in Maryland. I am writing to express concern to House Bill 307 (H. 307).

If Maryland were to adopt HB 307, it would become only the fourth state to adopt a specific biometric privacy law, joining Illinois, Texas and Washington.¹ HB 307 shares a similar definition for a “biometric identifier”, and similar notice and consent requirements with Illinois, Texas and Washington’s existing biometric privacy laws. However, in its current form, HB 307, would replicate the law of only a single state, Illinois’ biometric privacy law (BIPA) by providing a private right of action for individuals “aggrieved” by a violation of the law.

In choosing to emulate Illinois’ private right of action, enacted in 2008, Maryland is inviting a storm of class action lawsuits upon their businesses. In 2017 & 2018, Illinois saw a total of 148 class action suits filed under BIPA.² In January of last year, the Illinois Supreme Court ruled in

¹ Illinois, 740 ILCS 14; Texas, Title 11A, Ch. 503; Washington, Chapter 19.375 RCW.

² *Biometric Privacy Class Actions By The Numbers: Analyzing Illinois’ Hottest Class Action Trend*, by Maatman, Alhering & Karasik, Seyfarth Shaw LLP, June 28, 2019 :



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Rosenbach v. Six Flags Entertainment Corp., 2019 IL 123186 (Ill. Jan. 25, 2019), that an individual did not need to sustain actual damages in order to qualify as a “person aggrieved” in order to assert a claim under BIPA. This ruling opened the floodgates in Illinois, with more than 150 new BIPA class action cases being filed in the first six months following the *Rosenbach* ruling.³ BIPA class action lawsuits are quickly becoming a cottage industry in Illinois.

While protecting individuals’ privacy and biometric data is important and laudable, the private right of action and damages provisions within BIPA (and mirrored in HB 307) are exceptionally blunt instruments with outsized penalties, \$1,000 per violation or \$5,000 per intentional violation for achieving this end. In the case of Facebook, the company’s potential liability under BIPA was an astounding \$35 billion, and that assumed each person was awarded the lowest statutory amount of \$1,000 per violation. While companies like Facebook generate billions in revenue a year, largely off of their customer’s personal data, many businesses use biometrics for other things, such as security.

A majority of companies, 62 percent according to a recent survey, used biometric authentication technology in 2018.⁴ This number is expected to rise to 88 percent come 2020.⁵ The most common technology is fingerprint scans, used for security purposes to control access to company laptops, smartphones and tablets. The shift to the use of biometric authentication technology is really a tale of companies trying to secure their customer, client and employee data from hacking and theft. The number of reported data breaches has been steadily rising over the past several years⁶ as has the resulting cost to a company or individual suffering a data breach.⁷ The reality is that simple password protections are increasingly proving to be weak and ineffective ways of securing sensitive data. Using biometric technology in place of, or in many cases in conjunction with, passwords, PIN codes and other older security methods, reduces the risk of a security breach.

<https://www.workplaceclassaction.com/2019/06/biometric-privacy-class-actions-by-the-numbers-analyzing-illinois-hottest-class-action-trend/>

³ Id.

⁴ Spiceworks Biometric Study:

<https://www.spiceworks.com/press/releases/spiceworks-study-reveals-nearly-90-percent-businesses-will-use-biometric-authentication-technology-2020/>

⁵ Id.

⁶ How the number of data breaches is soaring:

<https://www.marketwatch.com/story/how-the-number-of-data-breaches-is-soaring-in-one-chart-2018-02-26>

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⁷ Cost of a Data Breach: <https://www.ibm.com/security/data-breach>



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For smaller businesses using biometrics to secure their customer information, intellectual property and their employee's information, a class action lawsuit under a BIPA style regulatory scheme, can represent an existential threat, leaving businesses in a challenging position of choosing how best to protect the data they have and respect the privacy rights of individuals.

We find it instructive that Texas and Washington—both of whom enacted their biometric privacy laws after Illinois (2009 & 2017 respectively)— chose not to create a private right of action, but instead to grant enforcement authority to their respective attorneys general. With BIPA available as a blueprint, they both chose a different enforcement mechanism.

IHRSA supports legislation that protects individuals, companies and employees' privacy while ensuring the continued development and use of technological innovation that enhances the consumer experience and club management. Finding the appropriate balance between data privacy, security and innovation is difficult. We are concerned that HB 307 fails to find this balance by including a private right of action that creates consequences that are disproportionate to the potential harm. We respectfully request that the bill be amended to remove the private right of action and provide enforcement authority to the Attorney General or some other appropriate agency.

If I can provide you with any additional information on this matter or about the fitness industry in Maryland, please do not hesitate to contact me, at jdp@ihrsa.org, or by calling IHRSA at (617) 951-0055.

Sincerely,

Jeff Perkins
Assistant Vice President of Government Relations
IHRSA