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7th Circuit Considers Scope of Illinois Biometric Info Privacy Act

Retailers, Restaurants Ask Court to Overturn Catastrophic District Court Interpretation of a Discrete Violation of the Law

Washington, D.C. – Biometric technology is advancing and creating tremendous efficiencies in daily tasks. The technology is highly secure and effective, but it is also a prime target for abusive lawsuits alleging technical violations of the Illinois Biometric Information Privacy Act (BIPA).

To curb this abuse, the Retail Litigation Center and the Restaurant Law Center are urging the U.S. Court of Appeals for the Seventh Circuit to overturn a district court decision finding that each biometric scan constitutes a discrete violation of BIPA, subject to its own liquidated damages award.

“The intent of BIPA is to promote, not hinder, the use of biometric technology. The district court’s decision is untenable and undoubtedly discourages retailers from using biometric technologies and advancements, which harms consumers, employees and employers who benefit from these tools,” said Kathleen McGuigan, deputy general counsel of the Retail Litigation Center.

The brief highlights a typical day of a hypothetical restaurant server who scans her finger to clock in and clock out for shifts and breaks, input orders, check an order’s status, print receipts for customers and close out an order. By the end of her shift, she has scanned her finger 95 times. Multiply that by five shifts per week and in a month she’s up to nearly 2,000 fingerprint scans. Under the district court’s reading of BIPA, the employer could be held liable for \$2 million in liquidated damages for a single employee over a one-month period.

“The district court’s expansive definition of Illinois’ biometric privacy law is in direct conflict with the purpose of the statute. Employers are acutely aware of the sensitive nature of biometric information and dedicate significant time, energy, and resources to comply with the privacy law. An innocent transgression by a company should not be exploited unnecessarily. If the district court’s decision is not overturned the risks for using biometric technologies will be exponential.”

“Small businesses across Illinois, like restaurants, rely on the added efficiency and safety provided by biometric technologies. The constant threat of lawsuits based on the district court’s decision will stifle operations and eliminate the intended benefits for both owners and employees – thus negating the intent of the BIPA. If the district court’s decision is allowed to stand, it will lead to extreme and absurd results,

and raise significant due process concerns by creating penalties far beyond any identified harm,” said Angelo Amador, executive director of the Restaurant Law Center.

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The Retail Litigation Center

Directed by the chief legal officers of the country's leading retail companies, the Retail Litigation Center (RLC) is the only organization dedicated to advocating for the industry's top priorities in the federal and state judiciary. The RLC also works with leading law firms and retail corporate counsel to develop forward-thinking strategies to combat meritless mass action litigation. Founded by the Retail Industry Leaders Association (RILA) in 2010 as an independent organization, the RLC is a 501(c)(6) membership association open to all retailers and select law firms.

The Restaurant Law Center

The Restaurant Law Center is an independent public policy organization affiliated with the National Restaurant Association. It was established to enhance the industry's voice in the judicial system. Through its initiatives, the Restaurant Law Center works to protect and advance the restaurant industry and promote pro-business laws and regulations that allow restaurants to continue to grow, create jobs and contribute to a robust American economy. The Law Center offers courts and regulatory agencies with the industry's perspective on legal and regulatory issues significantly impacting it. Find more information at restaurantlawcenter.org.