

Illinois Supreme Court to Hear BIPA Standing Case

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Recently, the Illinois Supreme Court agreed to accept an appeal from an Illinois appellate court's holding that the Illinois Biometric Privacy Act (BIPA) requires a showing of actual harm for plaintiffs to establish standing under the statute.

As we [previously covered](#), in the underlying decision, *Rosenbach v. Six Flags Entertainment Corp.*, the appellate court found that mere technical or procedural violations are insufficient to establish standing under BIPA. Such technical violations would include a failure to obtain the requisite consent or provide required disclosures under the law. Rather than allow plaintiffs to proceed with allegations of technical violations, the court in *Rosenbach* found that some type of showing of actual harm is required, such as evidence that the plaintiffs' biometric information was acquired and/or used by unauthorized third parties.

While BIPA has been an increasingly popular tool for class action plaintiffs over the past several years, the *Rosenbach* decision significantly curtailed new litigation under the statute. Therefore, the Illinois Supreme Court's pending decision is garnering significant attention amongst the plaintiffs' bar, companies doing business in Illinois, and privacy advocates. Because of this, commentators expect significant *amicus curiae* interest as the Court considers the appeal.

TIP: BIPA remains one of the most stringent data protection and privacy laws in the country, and when combined with its statutory damages and a private right of action, it is likely to remain a highly litigated statute. While a requirement of actual harm gives defendants a powerful argument, a reversal in *Rosenbach* by the Illinois Supreme Court could reignite the flurry of BIPA class actions that were filed in 2017.

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