



Avoiding and Defending BIPA Litigation

Put your business on the right side of change by seizing the advantages of workplace technology while remaining compliant with the privacy laws that govern it.

Enacted in 2008, the Illinois Biometric Information Privacy Act (“BIPA”) was the pioneer in protecting an individuals’ biometric information. Before Illinois’ BIPA, no other state had a standalone biometric statute. The statute is intended to defend the privacy interests associated with an individual’s biometric information by regulating how the information is collected, captured, used, and stored. Illinois’ BIPA sets itself apart from other state privacy laws by being the first state to create a private right of action that entitles individuals to seek statutory liquidated damages for violations of the statute. The statute also provides for attorneys’ fees, which has made it particularly attractive to the plaintiffs’ bar over the past five years.

The interest of state legislatures in the regulations of biometric data remains strong. In 2022 alone, seven state legislatures—in California, Kentucky, Maine, Maryland, Massachusetts, Missouri, and New York—introduced biometric privacy laws based on BIPA.

WHAT SETS US APART

Understanding Your Legal Demands and Business Needs.

As a leading consumer class action defense firm nationwide, Seyfarth is at the forefront of defending against this rising tide of BIPA-related litigation in Illinois. To date, Seyfarth has defended dozens of BIPA class action lawsuits. Clients turn to us because of our timely and effective communication with consumer class actions. Failure to comply with the stringencies of BIPA can result in significant statutory penalties, including up to \$1,000 dollars for each negligent violation and up to \$5,000 for each intentional violation, plus attorney fees. Businesses and organizations are simply trying to keep up with the BIPA’s ever-shifting compliance landscape and we know how to help them do so quickly and cost-efficiently.

Industry Know-How. It is essential to have proactive counsel and a multidisciplinary team on your side. We represent businesses in state and federal consumer class actions spanning all industries, including franchising, retail, food service, grocery & convenience stores, shipping & logistics, data analytics, automotive, health care & pharmaceutical, travel, hospitality & entertainment, consumer financial, and legal & professional services, among others.

Innovative Delivery. Our class action attorneys are prepared to defend industry clients and their principals nationally against putative class and BIPA class certifications at

the outset—aimed at cutting off class actions quickly and expeditiously. When a case does move forward, we employ an active motion practice that can halt plaintiffs’ momentum. At every step, we draw on our extensive courtroom and negotiating experience to provide unparalleled representation. Our BIPA team has defended cases before the 7th Circuit Court of Appeals and the Illinois Supreme Court.

Commitment to Excellence. Our multidisciplinary BIPA team is comprised of attorneys who understand biometric technology and have experience in specific areas of concentration, including employment attorneys who work directly with clients to develop risk management and compliance strategies. We will ensure that data collection and use provisions are in compliance in order to prevent exposure and establish processes and standards that minimize BIPA-related risk.

Industry Engagement. Our attorneys regularly speak and publish on developments in BIPA and also counsel clients on regulatory compliance and litigation avoidance strategies. Visit Seyfarth’s Consumer Class Defense Blog (www.consumerclassdefense.com), which provides perspectives and timely developments on BIPA litigation and regulatory activity.

OUR SERVICES

Best-in-Class Litigation and Trusted Advice. We offer a full range of legal services that cover all facets of BIPA compliance and litigation, including the following:

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| Defense of high-stakes putative class actions and single-plaintiff lawsuits | Third party due diligence and contract review |
| Compliance counseling and audits | Preparation of applicable agreements and policies |

OUR EXPERIENCE

We have substantial experience representing companies in BIPA matters, in over 100 BIPA lawsuits in federal and state courts and arbitrations, and at all phases. A few representative matters include:

- Representation of a global technology manufacturing company in a purported class action brought under the Illinois Biometric Information Privacy Act involving an equipment manufacturer in the Chicagoland area.
- Representation of a Fortune 500 distributor with respect to headset and voice technology.
- Obtained multiple voluntary dismissals on behalf of companies after presenting various defenses to BIPA class action.
- Obtained dismissal on behalf of staffing company that did not collect or access biometric information for temporary workers enrolled in customer time clock.
- Representation of national retailer in a multi-district lawsuit involving its use of facial recognition cameras to combat against retail theft.
- Representation of an online dating service conglomerate alleged to have used facial recognition to verify account users.
- Representation of third-party reseller of biometric hardware and software in subpoenaed testimony.
- Representation of a large online company with respect to voice technology.
- Obtained dismissal of class action where plaintiff failed to allege claims under BIPA with enough specificity required under Illinois pleading standards.
- Successfully negotiated favorable settlements in over a dozen BIPA class actions.
- Representation and successful resolution of a sandwich restaurant multi-unit franchisee in BIPA class action.

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