



## WORLD **PRIVACY** FORUM

9 April 2018

*Via email: [Iroberson-young@senatedem.ilga.gov](mailto:Iroberson-young@senatedem.ilga.gov), [bill@billcunningham.com](mailto:bill@billcunningham.com)*

Chairman Bill Cunningham  
Telecommunications and Information Technology Committee  
Illinois State Senate  
705 Stratton Building  
Springfield, Illinois 62706

### **Re: Opposition to 6 April 2018 Amendment to Bill 3053**

Dear Senator Cunningham,

The World Privacy Forum, joined by the **Center for Democracy and Technology**, the **Center for Digital Democracy**, **Consumer Action**, **Consumer Federation of America**, **Consumer Watchdog**, **Constitutional Alliance**, **Cyber Privacy Project**, **Defending Rights & Dissent**, **Illinois Library Association**, **National Network to End Domestic Violence**, **National Workrights Institute**, **Patient Privacy Rights Coalition**, **Privacy Rights Clearinghouse**, and **Alvaro Bedoya** of Center on Privacy & Technology at Georgetown Law write today to express our opposition to the Amendment to Bill 3053, Filed April 6, 2018. (<http://www.ilga.gov/legislation/100/SB/10000SB3053sam002.htm>) This amendment produces profound and deleterious changes to the Biometric Information Privacy Act. (hereafter “BIPA”).

The amendment would entirely undermine BIPA in multiple ways. BIPA will be a meaningless statute if the amendment is enacted, and it will strip Illinois residents of rights they currently enjoy and have enjoyed for a decade. It is rare for a legislature to roll back consumer protection law that has been well established. It would be unprecedented to do so at this time when the country is having an exceptional conversation concerning consumer privacy rights and corporations’ use of consumers’ personal data.

First, the amendment stipulates that companies that comply with the Illinois Personal Information Protection Act don't have to comply with BIPA. The Personal Information Act is a data breach statute, and does not provide anywhere that consumers have the right to consent to biometric collections. Thus, the proposed amendment language, if passed,

nullifies BIPA in its entirety.

Second, the amendment changes the technical definition of biometrics so as to render BIPA inapplicable to actual biometrics. In its current form, BIPA defines “biometric identifier” as “a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.” 740 Ill. Comp. Stat. 14/10. This is construed to include photographs and digital photographs, because the scanning of biometric identifiers like facial recognition is almost always based on an image or photograph. This is taken as a relatively unambiguous fact in the biometrics profession.

To purposefully and specifically exclude photographs and digital photographs, as the proposed amendment does, means BIPA will not apply to biometrics due to how biometric analytical processes work. The amended BIPA definition states:

“Biometric identifiers do not include physical or digital photographs; video recordings; audio recordings; data generated from physical or digital photographs, video recordings, or audio recordings; writing samples; , written signatures; ....”

Again, this definition makes BIPA inapplicable to most biometric databases and work done today. It has the effect of removing BIPA’s original intent to protect consumers.

Many vulnerable members of society are negatively impacted by the removal of BIPA protections, for example, victims of domestic violence are among the individuals meaningfully and deleteriously impacted by the proposed amendment, which reduces these individuals' ability to know and consent to when biometric techniques may be used, including in the workplace. Many vulnerabilities are associated with the use of biometrics due to false positive rates. There are also separate issues related to security, for example, improper acquisition and use of biometric templates, including in data breaches.

The proposed amendment to BIPA was introduced recently, in early April 2018. Again, it is an extraordinary time in which public trust in the digital ecosystem and in companies managing large platforms has been deeply damaged by the recent Facebook data scandals. A negative change to Illinois residents’ digital ecosystem rights this substantive and meaningful deserves robust, meaningful public debate and a much longer period of deliberation and review. It is exactly the wrong time for the Illinois Legislature to propose a law that undermines the public trust in the digital economy and undermines consumers' ability to consent to important data collection and usage such as the use of facial recognition and other forms of biometrics in commercial settings.

The Illinois BIPA is a high-profile law that has justly received national and international attention as a thoughtful, balanced, progressive law. We have discussed this law both nationally and internationally as a very significant piece of legislation. It is lauded by privacy and consumer advocates and privacy regulators around the globe. Companies, meanwhile, have found the law relatively easy to comply with. Consent requirements have not been onerous for companies to comply with, and these requirements are eminently doable and much less stringent than, for example, consent requirements under the Fair Credit Reporting Act.

We urge you to oppose this amendment and protect the only meaningful biometric privacy law in this nation, and protect the rights of Illinois residents.

Thank you for your consideration. Please contact Pam Dixon and the signatories of this letter if you would like to discuss our concerns about the negative impacts to people if BIPA is negated as currently proposed.

Sincerely,



Pam Dixon, Executive Director  
**World Privacy Forum**  
760-470-2000  
[pdixon@worldprivacyforum.org](mailto:pdixon@worldprivacyforum.org)  
[www.worldprivacyforum.org](http://www.worldprivacyforum.org)

***Joined by:***

**Center for Democracy and Technology**  
[www.cdt.org](http://www.cdt.org)

**Center for Digital Democracy**  
[www.democraticmedia.org](http://www.democraticmedia.org)

**Consumer Action**  
[www.consumer-action.org](http://www.consumer-action.org)

**Consumer Federation of America**  
[www.consumerfed.org](http://www.consumerfed.org)

**Consumer Watchdog**  
[www.consumerwatchdog.org](http://www.consumerwatchdog.org)

**Constitutional Alliance**

[www.constitutionalalliance.org](http://www.constitutionalalliance.org)

**Cyber Privacy Project**

[www.cyberprivacyproject.org](http://www.cyberprivacyproject.org)

**Defending Rights & Dissent**

[www.rightsanddissent.org](http://www.rightsanddissent.org)

**Illinois Library Association**

[www.ila.org](http://www.ila.org)

**National Network to End Domestic Violence**

[www.nnedv.org](http://www.nnedv.org)

**National Workrights Institute**

[www.workrights.org](http://www.workrights.org)

**Patient Privacy Rights Coalition**

[www.patientprivacyrights.org](http://www.patientprivacyrights.org)

**Privacy Rights Clearinghouse**

[www.privacyrights.org](http://www.privacyrights.org)

**Alvaro Bedoya**, Executive Director, Center on Privacy and Technology, Georgetown Law [signing as an individual.]

[www.law.georgetown.edu/faculty/bedoya-alvaro.cfm](http://www.law.georgetown.edu/faculty/bedoya-alvaro.cfm)

CC:

Senator John J. Cullerton  
President of the Senate  
Illinois State Senate  
705 Stratton Building  
Springfield, Illinois 62706