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Cybersecurity & Privacy Alert

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Illinois' High Court issues seminal decision on BIPA statute of limitations

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The Illinois Supreme Court ruled that a five-year limitations period governs all claims under BIPA.



What's the Impact?

- / BIPA does not include a statute of limitations within the statutory text. This ruling clarifies that BIPA suits must be filed within five years.
- / Numerous BIPA cases across Illinois are stayed pending resolution of this case. These stays will likely be lifted in the near future and defendants now have clearer guidance on the applicable statute of limitations

On February 2, 2023, the Illinois Supreme Court issued a seminal ruling in *Tims v. Black Horse Motor Carriers, Inc.*, holding the five-year limitations period in section 13-205 of the Code of Civil Procedure governs all claims alleging violations of the Illinois Biometric Information Privacy Act (BIPA). This ruling reverses the First District Appellate Court's decision, which had applied the one-year limitations period of section 13-201 to BIPA claims asserted under sections 15(c) and (d). These claims generally involve:

- / Improperly profiting from or selling biometric data in violation of section 15(c); and
- / Disclosing or otherwise disseminating biometric data in violation of section 15(d).

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The supreme court's ruling affirms the appellate court's decision that the five-year limitations period in section 13-205 governs BIPA claims asserted under sections 15(a), (b), and (e). These claims generally involve:

- / Failing to develop a written retention schedule and guidelines for destroying biometric identifiers in violation of section 15(a);
- / Failing to obtain written notice and consent before collecting biometric information in violation of section 15(b); and
- / Failing to take reasonable care in storing, transmitting, and protecting biometric information.

The Illinois Supreme Court held that applying two limitations periods to BIPA claims "could confuse future litigants about when claims are time-barred" and "would create an unclear, inconvenient, inconsistent, and potentially unworkable regime as it pertains to the administration of justice for claims under the Act."

The decision's impact

- / BIPA does not include a statute of limitations within the statutory text. This ruling clarifies that BIPA suits must be filed within five years.
- / Numerous BIPA cases across Illinois are stayed pending resolution of this case. These stays will likely be lifted in the near future and defendants now have clearer guidance on the applicable statute of limitations.

What's next?

- / In *Cothron v. White Castle*, the Illinois Supreme Court will decide whether BIPA claims under section 15(b) and section 15(d) accrue one time (at the time of initial collection) or each and every time a private entity collects or discloses biometric information.
- / On January 25, 2023, the Illinois Supreme Court granted a petition for leave to appeal in *Mosby v. The Ingalls Memorial Hospital*. At issue in *Mosby* is whether finger-scan information collected by healthcare providers for their employees falls within a BIPA healthcare exemption.

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