
**BIPA vs. CUBI: COMPARATIVE ANALYSIS OF MAJOR BIOMETRIC PRIVACY ACTS
IN ILLINOIS AND TEXAS**

❖ Note ❖

*Anastasiia Cheban**

I. INTRODUCTION

Over the past several years, the Illinois' Biometric Information Privacy Act (BIPA) has expanded in scope and other states have adopted similar acts.¹ BIPA requires businesses and private entities that collect any biometric information from individuals to disclose that collection.² The act prohibits collecting, capturing, purchasing, or obtaining an individual's biometric information without a written disclosure of the nature of the collection.³

Other states have also been influenced by Illinois' legislation on the collection, retention, and sale of biometric information.⁴ For example, Texas adopted a similar statute in 2009, titled, the "Capture or Use of Biometric Identifier Act" (CUBI).⁵ The act is structured similarly to BIPA; however, it has significant differences that affect its enforcement, which has affected the number of lawsuits

* J.D. Candidate, Class of 2026, University of Illinois College of Law.

¹ See David E. Morrison, *Illinois Supreme Court Further Expands the Scope of the Biometric Information Privacy Act*, GOLDBERG KOHN (Feb. 16, 2023), <https://www.goldbergkohn.com/news/illinois-supreme-court-further-expands-the-scope-of-the-biometric-information-privacy-act/>; TEX. BUS. & COM. CODE § 503.001 (2009).

² See Anjali C. Das, *Beware of BIPA and other biometric laws – an overview*, REUTERS (Jul. 22, 2023, 9:05 AM), <https://www.reuters.com/legal/legalindustry/beware-bipa-other-biometric-laws-an-overview-2023-06-22/>.

³ 740 ILL. COMP. STAT. 14/15(b) (2008).

⁴ See Tony Riley, *Illinois' biometric privacy law provides blueprint as states seek to curb data collection*, CYBERSCOOP (Feb. 28, 2023), <https://cyberscoop.com/states-bipa-biometric-privacy-legislation-illinois/>.

⁵ TEX. BUS. & COM. CODE § 503.001 (2009).

brought under the act.⁶ Although there are only three states that have active legislation, other states have considered passing biometric privacy laws.⁷ However, these statutes, like those in Illinois and Texas, greatly differ in their scope and enforceability.⁸

Texas' CUBI and Illinois' BIPA provide a valuable opportunity for comparative analysis because CUBI has many similarities to, and was passed shortly after, BIPA. However, there are also considerable differences between the two acts. For example, there are differences in who can bring suit, the amount of damages per violation, liability for employers, and potential differences in statutes of limitations.⁹ BIPA is the leading act in protecting consumers and employees of private entities from collection and sale of their biometric information.¹⁰ Many states followed Illinois' example and adopted their own versions of biometric protection acts, such as Texas' CUBI.¹¹ Although the acts are similar, with recent interpretations of BIPA by Illinois courts,¹² the differences continue to grow and there is a question of whether other states would follow Illinois' lead in the new area of biometric protection. Because both acts have similar language and were adopted in close time proximity, it would be beneficial to investigate what the substantial differences are, how the interpretation changed the scope of BIPA and whether there might be a similar change to CUBI in Texas. Until recently, there were not a lot of cases brought under CUBI. However, in 2022 the Texas Attorney General brought two cases against Google and Meta for violation of biometric privacy laws, after seeing the success of similar suits in Illinois.¹³

This article will analyze the differences between Biometric Privacy Acts in Illinois and Texas and other states that adopted similar legislation. Part II will describe the necessary background of the biometric privacy acts.¹⁴ Part III will analyze and compare the effects differences in drafting and interpretation by the

⁶ *Id.*

⁷ See *U.S. Biometric Laws & Pending Legislation Tracker*, BRYAN CAVE LEIGHTON PAISNER LLP (Jun. 2, 2023), <https://www.bcplaw.com/en-US/events-insights-news/us-biometric-laws-and-pending-legislation-tracker.html>.

⁸ *Id.*

⁹ See *infra* Section III.A.1.

¹⁰ Joe Duball, *The rise of US state-level BIPA: Illinois leads, others catching up*, INT'L ASS'N OF PRIV. PROFESSIONALS (Mar. 28, 2023), <https://iapp.org/news/a/the-rise-of-us-state-level-bipa-illinois-leads-others-catching-up>.

¹¹ See Riley, *supra* note 4.

¹² Kirk J. Nahra and Ali A. Jessani, *Year in Review: 2023 BIPA Litigation Takeaways*, WILMERHALE (Jan. 31, 2024), <https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20240131-year-in-review-2023-bipa-litigation-takeaways>.

¹³ John Ruskusky, *Texas attorney general initiates biometric privacy enforcement action against Facebook*, NIXON PEABODY (Feb. 15, 2022), <https://www.nixonpeabody.com/insights/articles/2022/02/15/texas-attorney-general-initiates-biometric-privacy-enforcement-action-against-facebook>.

¹⁴ See *infra* Part II.

courts have on lawsuits and businesses in Illinois and Texas.¹⁵ Part IV will list recommendations for businesses and legislation pertaining to biometric privacy laws.¹⁶

II. BACKGROUND

A. Biometric Information and the Purpose of BIPA

As defined in BIPA, biometric information includes any information based on an individual's biometric identifiers.¹⁷ Biometric identifiers include retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.¹⁸ Moreover, the statute also lists what is not included in the definition of biometric identifiers, such as signatures, donated organs, tissues, tattoos, and human biological samples used for valid scientific testing, among others.¹⁹ The main purpose of BIPA is to protect consumers from private entities obtaining consumers' biometric information, and selling and trading such information.²⁰ More significantly, under the statute, any person whose rights have been violated can bring an action against a private entity.²¹

However, the scope of the statute and what causes of action can be brought under this statute have been greatly expanded in the last several years based on court decisions.²² For example, in *Cothron*, the Court rejected the idea that a claim under BIPA is limited to the first time a private entity scanned biometric information.²³ In another important decision in *Rosenbach v. Six Flags Entertainment Corp.*, the Court held that no actual damages are required to bring a case under BIPA.²⁴ As a result, there has been a 1400% increase in lawsuit filings, from nine in 2018 to 134 in 2019.²⁵ In 2020, there were 209 BIPA cases filed.²⁶ Another case that extended the reach of BIPA was *Tims v. Black Horse Carriers*, where the Court set the statute of limitations to bring the action under BIPA to five years, instead of the one year that the

¹⁵ See *infra* Part III.

¹⁶ See *infra* Part IV.

¹⁷ 740 ILL. COMP. STAT. 14/10 (2008).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* § 14/15 (2008).

²¹ *Id.* § 14/20 (2008).

²² See Morrison, *supra* note 1.

²³ *Cothron v. White Castle Sys., Inc.*, 216 N.E.3d 918, 924-25 (Ill. 2023), as modified on denial of reh'g (July 18, 2023).

²⁴ *Rosenbach v. Six Flags Ent. Corp.*, 129 N.E.3d 1197, 1205 (Ill. 2019).

²⁵ Kaitlyn Harger, *Who Benefits From BIPA? An Analysis of Cases Brought Under Illinois' State Biometric Law*, CHAMBER OF PROGRESS (April 2023), <https://progresschamber.org/wp-content/uploads/2023/03/Who-Benefits-from-BIPA-Analysis-of-Cases-Under-IL-Biometrics-Law.pdf>.

²⁶ *Id.*

defendants argued for.²⁷ The effect of increasing the statute of limitations further expands the scope of BIPA.²⁸

Moreover, BIPA is used not only for consumer protection but also in employment cases.²⁹ In *McDonald v. Symphony*, the Court held that employees could bring an action under BIPA against their employer for biometric privacy violations.³⁰

B. *The Biometric Identifier Act in Texas*

In Texas, on the other hand, CUBI sets out more restrictions on what can be brought under the statute and who can bring such a case.³¹ As in BIPA, biometric identifiers under CUBI include retina or iris scans, fingerprint, voiceprint, or records of hand or face geometry.³² However, there is pending legislation on amending CUBI to add a right of action not only from the attorney general but from private individuals who are affected by the violation of the act.³³ Another difference between CUBI and BIPA is that a cause of action under CUBI needs to be based on the commercial activity of the private entity, whereas no such distinction is accounted for under BIPA.³⁴

Although Texas has been relatively inactive in enforcing the statute,³⁵ mainly because the action can only be brought by the Attorney General,³⁶ in 2022, a major action was filed against Meta and Google based on violation of CUBI.³⁷ The compensation sought accounts for every instance each company committed a biometric privacy violation, which can amount to billions of dollars since the amount of damages under CUBI is \$25,000 per violation.³⁸

²⁷ *Tims v. Black Horse Carriers, Inc.*, 216 N.E.3d 845, 852 (Ill. 2023).

²⁸ *BIPA Claims Uniformly Have a 5-Year Statute of Limitations*, CROWELL & MORING LLP, <https://www.crowell.com/en/insights/client-alerts/bipa-claims-uniformly-have-a-5-year-statute-of-limitations> (last visited Jun. 1, 2024).

²⁹ See Jordan Richards, *What makes BIPA so important to employees in Illinois?* USA EMP. LAWYERS (Mar. 13, 2023), <https://www.usaemploymentlawyers.com/blog/2023/march/what-makes-bipa-so-important-to-employees-in-ill/>.

³⁰ *McDonald v. Symphony Bronzeville Park, LLC*, 193 N.E.3d 1253, 1268 (Ill. 2022).

³¹ See TEX. BUS. & COM. CODE § 503.001 (2009); Ruskusky, *supra* note 13.

³² TEX. BUS. & COM. CODE § 503.001 (2009).

³³ H.B. 4705, 88th Leg., Reg. Sess., (Tx. 2023).

³⁴ TEX. BUS. & COM. CODE § 503.001 (2009).

³⁵ See F. Mario Trujillo & Jon Frankel, *Texas Starts Enforcing its Biometric Law*, ZWILLGEN BLOG (Feb. 18, 2022), <https://www.zwillgen.com/privacy/texas-cubi-law-and-biometric-privacy/>.

³⁶ Ruskusky, *supra* note 13.

³⁷ See Bart Huffman & Haylie D. Treas, *Texas Enforcement of Biometric Law Focuses on Artificial Intelligence*, HOLLAND & KNIGHT (Nov. 14, 2022), <https://www.hkllaw.com/en/insights/publications/2022/11/texas-enforcement-of-biometric-law-focuses-on-artificial-intelligence>.

³⁸ TEX. BUS. & COM. CODE § 503.001 (2009).

III. ANALYSIS

A. Statutory Differences

Some of the differences between the two acts include the fact that CUBI restricts the capture of biometric information, but not information derived from that information.³⁹ BIPA is primarily focused on protecting individuals' information, even information that is based on a biometric identifier.⁴⁰ Additionally, CUBI only requires the private entity to obtain consent, whereas BIPA requires written consent,⁴¹ although there is proposed legislation in Texas to add a written consent element to the act.⁴²

The main difference that makes the application drastically different between the states is who can bring the suit. Under BIPA, there are no restrictions on who can bring a suit, meaning that any private person can bring the case under the statute.⁴³ In Texas, on the other hand, the statute limits the class of people who can bring the suit to only the Attorney General.⁴⁴ Moreover, there are differences in damage requirements per violation, application to employers and statute of limitations which affect how the acts are implemented and how many suits are brought under BIPA and CUBI.⁴⁵

1. Who Can Initiate Suits?

As mentioned earlier, one of the big differences between the two acts is the fact that under BIPA any individual can bring a suit against a company that violated the act. Under CUBI, however, only the Attorney General can bring a suit against a violating company.⁴⁶

Recently, the Texas Attorney General has filed a lawsuit against Facebook, seeking hundreds of billions of dollars for a CUBI violation.⁴⁷ Before this case was filed, there had been little enforcement of CUBI.⁴⁸ However, following the success of enforcement of BIPA, especially in recent years,⁴⁹ Texas seems to be doubling down

³⁹ See Thomas Ahlering & Andrew Cockroft, *All Eyes on Texas After Filing First Enforcement Action Under State's Biometric Privacy Law*, JD SUPRA (Mar. 16, 2022), <https://www.jdsupra.com/legalnews/all-eyes-on-texas-after-filing-first-1933187/>.

⁴⁰ *Id.*

⁴¹ TEX. BUS. & COM. CODE § 503.001 (2009).

⁴² H.B. 4705, 88th Leg., Reg. Sess., (Tx. 2023).

⁴³ 740 ILL. COMP. STAT. 14/20 (2008).

⁴⁴ TEX. BUS. & COM. CODE § 503.001 (2009).

⁴⁵ See *infra* Section III.A.2, 3.

⁴⁶ Ruskusky, *supra* note 13.

⁴⁷ *Id.*

⁴⁸ See Trujillo & Frankel, *supra* note 35.

⁴⁹ See Nahra & Jessani, *supra* note 12.

on enforcement and filing suits against violators.⁵⁰ This is an important difference to note because the number of suits that can be brought under the acts differs significantly.⁵¹

2. Differences in Damage Requirements

Under CUBI, the amount of damages that can be recovered by the Attorney General is \$25,000 per violation.⁵² Under BIPA, a private party can recover \$1,000 per negligent violation and \$5,000 per intentional or reckless violation.⁵³ Moreover, under BIPA, plaintiffs can recover “reasonable attorneys’ fees and costs, including expert witness fees and other litigation expenses.”⁵⁴

Although CUBI has been modeled after BIPA, there are drastic differences between the amount of damages per violation. In 2023, the Illinois Supreme Court interpreted the language in the statute to mean violations that “occur with every scan or transmission.”⁵⁵ The Court interpreted the words “collect” and “capture” to mean that violation can happen more than once in a single collection method.⁵⁶ For example, using fingerprints to access paystubs is a system that works by collecting and capturing that biometric information every time an employee accesses those paystubs, which constitutes several violations each time fingerprints are used.⁵⁷ Moreover, as to the requirement of disclosure, the Court held that it does not happen only once.⁵⁸ Specifically, the focus is on the word “rediscover” in the statute, which supports the conclusion that violations can accrue with each capture or transmission of a “biometric identifier or information without prior informed consent.”⁵⁹

It is difficult to say what courts in Texas would hold regarding the damages since not many cases have been filed based on CUBI as the Attorney General is the only person who can bring a lawsuit under the act.⁶⁰ However, because CUBI was based largely on BIPA, there is similar language in the statute, such as the word “capture.”⁶¹ Therefore, it is possible that Texas courts could interpret violations

⁵⁰ See Trujillo & Frankel, *supra* note 35.

⁵¹ Harger, *supra* note 25.

⁵² TEX. BUS. & COM. CODE § 503.001 (2009).

⁵³ 740 ILL. COMP. STAT. 14/20 (2008).

⁵⁴ 740 ILL. COMP. STAT. 14/20(3) (2008).

⁵⁵ Cothron v. White Castle Sys., Inc., 216 N.E.3d 918, 926 (Ill. 2023), as modified on denial of reh’g (July 18, 2023).

⁵⁶ *Id.* at 924.

⁵⁷ *Id.*

⁵⁸ *Id.* at 925.

⁵⁹ *Id.* at 926.

⁶⁰ Ruskusky, *supra* note 13.

⁶¹ TEX. BUS. & COM. CODE § 503.001 (2009).

occurring per every scan or transmission of biometric information, which can amount to increased damages.

It is important to determine whether Texas would similarly consider each violation to include violations per scan or transmission because of the drastic difference in damages allowed under CUBI.⁶² This is especially important because CUBI is based on BIPA, and its interpretation by Illinois courts might have some influence on how the statute in Texas develops.

3. *Differences in Application: Employers and Commercial Purpose*

Although BIPA’s purpose is to protect consumers from private entities collecting and selling their biometric information, it also applies to employers collecting biometric information of their employees.⁶³ The Supreme Court of Illinois held that BIPA mentions written release in the employment context, therefore it also applies to employers.⁶⁴ Specifically, the statute defines “written release” as “informed written consent or, in the context of employment, a release executed by an employee as a condition of employment.”⁶⁵

However, CUBI mentions the prohibition of the collection or sale of biometric identifiers for “commercial purpose.”⁶⁶ Moreover, it allows such collection of biometric information by employers for security purposes and such purpose is “presumed to expire on termination of the employment relationship.”⁶⁷ The difficulty with interpreting CUBI and its application to employers is that it prohibits collection for “commercial purposes,” which it does not define. Therefore, there is a question of whether employers selling the biometric information of their employees would fall within the collection for “commercial purpose” and therefore would fall under CUBI.

4. *Differences in Statute of Limitations*

Recently, the Supreme Court of Illinois determined that a 5-year statute of limitations applies to any action brought under BIPA.⁶⁸ In the case *Tims v. Black Horse Carriers, Inc.*, the defendants argued that because BIPA “is a privacy statute” it should be governed by a 1-year statute of limitation.⁶⁹ Plaintiffs, on the other hand, stated that the statute of limitations for BIPA should be 5 years.⁷⁰ The court held

⁶² *Id.*

⁶³ Richards, *supra* note 29.

⁶⁴ McDonald v. Symphony Bronzeville Park, LLC, 193 N.E.3d 1253, 1268 (Ill. 2022).

⁶⁵ 740 ILL. COMP. STAT. 14/10 (2008).

⁶⁶ TEX. BUS. & COM. CODE § 503.001(b) (2009).

⁶⁷ *Id.* § 503.001(c-2).

⁶⁸ *Tims v. Black Horse Carriers, Inc.*, 216 N.E.3d 845, 854 (Ill. 2023).

⁶⁹ *Id.* at 847.

⁷⁰ *Id.* at 847–48.

that because BIPA does not contain any provision regarding the statute of limitations, a 5-year limitation is appropriate, considering the history of applying that limitation to statutes that do not have a provision regarding a specific statute of limitation period.⁷¹ Moreover, the Court looked at policy considerations for why it is beneficial to adopt a 5-year statute of limitations period, which included the protection of public welfare, security, and safety of the public.⁷²

CUBI also does not have a specific statute of limitations provision as part of the text of the statute.⁷³ Under the Texas Civil Practice and Remedies Code, there are several statutes of limitations, ranging from one to four years.⁷⁴ The category where CUBI would fit, specifically trespass to personal rights, would consist of a two-year statute of limitations period.⁷⁵ This would make sense in light of *Tims*, where the court noted the difficulty in discovering violations might warrant an even longer, five-year statute of limitations.⁷⁶

A. Effects of the Differences Between the Acts

Differences between the Acts among states show there is no uniformity on how biometric information should be protected. The main effect of the difference can be seen in the number of lawsuits filed in Illinois compared to Texas.⁷⁷ Moreover, because CUBI was based on BIPA, and seeing how much BIPA's interpretation has evolved in recent years, there might be some effects that are not yet seen on biometric privacy legislation in Texas.⁷⁸ For example, until recently, there has been relatively little enforcement of CUBI until the Attorney General filed two major lawsuits after seeing major progress in Illinois courts.⁷⁹

Moreover, there is no federal statute that might guide the states when considering or adopting biometric privacy legislation.⁸⁰ However, Congress has introduced the "National Biometric Information Privacy Act of 2020" which, similar to BIPA, requires private entities to "inform the individual in writing of the collection and its purpose and receive a written release."⁸¹ Additionally, the proposed bill established a private right of action, similar to BIPA.⁸² Although the bill was

⁷¹ *Id.* at 853.

⁷² *Id.* at 854.

⁷³ TEX. BUS. & COM. CODE § 503.001 (2009).

⁷⁴ TEX. CIV. PRAC. & REM. CODE ANN. § 16.003 (West 2005).

⁷⁵ *Id.*

⁷⁶ *Tims*, 216 N.E.3d at 854.

⁷⁷ Harger, *supra* note 25.

⁷⁸ *See supra* Part I.

⁷⁹ *See Huffman & Treas, supra* note 37.

⁸⁰ *Biometric data and USA privacy laws*, LAXTON, <https://www.laxton.com/blog/biometric-data-and-usa-privacy-laws/> (last visited Jun. 1, 2024).

⁸¹ National Biometric Information Privacy Act, S.4400, 116th Cong. (2020).

⁸² *Id.*

proposed, there have been no additional actions regarding pushing forward with this legislation.

B. Other States

Although Illinois and Texas can be seen at the forefront of Biometric Privacy legislation, other states have also followed suit in adopting similar legislation.⁸³ For example, New York City has adopted legislation that requires commercial establishments to disclose the collection of biometric information.⁸⁴ Moreover, the legislation makes it unlawful to sell, lease, and trade that information.⁸⁵ Another state that has similar legislation is Washington, which provides that a person may not enroll a biometric identifier in a database for a commercial purpose without providing notice and obtaining consent.⁸⁶

Although these states have some sort of legislation protecting biometric information, they do not compare in scope to legislation in Illinois and Texas.⁸⁷ They mostly focus on the commercial use of such biometric identifiers and mainly aim to protect consumers from fraud.⁸⁸

IV. RECOMMENDATIONS

The main concern with BIPA and its expanding scope is the increased liability companies face as well as potential impact on other states to expand their biometric statutes.⁸⁹ As seen, permitting private actors to bring an action, without requiring substantial harm be caused, has opened the doors to an increased number of lawsuits filed.⁹⁰ It has become very easy to bring a cause of action against companies based on BIPA and compensation based on the acts can amount to an enormous amount of money.⁹¹

⁸³ See, e.g., *As States Attempt to Toughen Biometric Data Restrictions, Companies that Collect and Store Biometric Data Face Risk*, KOLEY JESSEN (Mar. 15, 2023), <https://www.koleyjessen.com/newsroom-publications-as-states-attempt-to-toughen-biometric-data-restrictions-companies-that-collect-and-store-biometric-data-face-risk>.

⁸⁴ NEW YORK, N.Y., ADMIN. CODE §§ 22-1201-1205.

⁸⁵ *Id.*

⁸⁶ WASH. REV. CODE §§ 19.375.010 *et seq.* (2017).

⁸⁷ See Husch Blackwell LLP, *Tracking U.S. state biometric privacy legislation*, <https://www.huschblackwell.com/2024-state-biometric-privacy-law-tracker> (last visited August 14, 2024).

⁸⁸ *Id.*

⁸⁹ See KOLEY JESSEN, *supra* note 84.

⁹⁰ Harger, *supra* note 25.

⁹¹ See Lisa Burden, *Biometric privacy settlements spark insurance coverage battles*, LEGAL DIVE (Feb. 26, 2024), <https://www.legaldive.com/news/biometric-privacy-settlements-spark-insurance-coverage-battles-BIPA-Wilson-Elser-anderson-kill/708562/>.

Biometric Privacy laws are evolving not only through legislation but also through court decisions.⁹² For businesses, it is crucial to track any change in interpretation of statutes and any potential expansion of the scope of the statutes.⁹³ Comparing BIPA and CUBI could present an insight into whether CUBI's scope could potentially be enlarged based on what happened in courts in Illinois because it is similar to BIPA.⁹⁴

One recommendation is to limit legislation to where the Attorney General can bring a case on behalf of individuals who have been affected by the violations. This way, very serious cases are going to be brought to light and people who have been adversely affected by such violation will be compensated. This will limit the number of lawsuits filed by private actors.

Another recommendation is to consider a specific statute of limitations for legislation involving biometric information. This is especially relevant in the case of CUBI, where it can be confusing when the Attorney General can bring the case.⁹⁵ In Illinois, the Court looked at a policy regarding people not knowing when the violation occurred when deciding to give BIPA a 5-year statute of limitations.⁹⁶ In Texas, on the other hand, the one who brings the lawsuit is the Attorney General, which might complicate when the information of the violation becomes known to the Attorney General and how fast the lawsuit can be filed once they know of the violation. Although different parties bring lawsuits, there is still an element of people not knowing if their rights were violated right away, which might also justify a longer statute of limitations in Texas. As a result, a specific statute of limitations that is written out in the statute could be beneficial for companies and parties whose rights were violated to better predict when lawsuits can be brought.

It is important to consider whether expansion of BIPA and CUBI or any biometric privacy laws would benefit society as a whole or instead would contribute to an increased number of lawsuits, where plaintiffs do not have to point to damages caused by the violation. It would be important to consider how biometric privacy laws in one state would apply to businesses that conduct their business in various states.

⁹² See Nahra & Jessani, *supra* note 12.

⁹³ Hadi Al Buheisi, *Navigating Biometric Privacy Laws in the United States: A Comprehensive Guide for Businesses*, BIOCONNECT (Dec. 4, 2023), <https://bioconnect.com/2023/12/04/navigating-biometric-privacy-laws-in-the-united-states-a-comprehensive-guide-for-businesses/>.

⁹⁴ *Rip Van Wrinkle: The Grandfather of Biometric Laws Awakens*, PERKINS COIE LLP (Mar. 1, 2022), <https://www.perkinscoie.com/en/news-insights/rip-van-wrinkle-the-grandfather-of-biometric-laws-awakens.html>.

⁹⁵ Ruskusky, *supra* note 13.

⁹⁶ *Tims v. Black Horse Carriers, Inc.*, 216 N.E.3d 845, 854 (Ill. 2023).

Biometric privacy litigation is likely to remain a difficult issue.⁹⁷ However, it is important to consider all possibilities when drafting new privacy legislation, and it is especially important to consider how the courts will interpret it.

V. CONCLUSION

Biometric Privacy is a new field of law that was introduced by the Illinois government in 2008 in response to technological advances.⁹⁸ The question of what is protected and for what exactly companies and employers are liable under biometric privacy laws is still interpreted by the courts. There are only 3 states, Illinois, Texas, and Washington, that have active legislation protecting biometric information of individuals from private entities.⁹⁹ As technology continues to develop, there is increasing concern with companies collecting and selling biometric information of individuals which might inspire other states to adopt similar biometric privacy laws.¹⁰⁰ As a result, it is important to understand the successes and setbacks of existing legislation, such as BIPA and CUBI, to ensure that as states start to enact similar acts, they understand what effects on businesses and the court system as a whole this legislation would have.

⁹⁷ Fredric D. Bellamy, *Looking to the future of biometric data privacy law*, REUTERS (Apr. 6, 2022), <https://www.reuters.com/legal/legalindustry/looking-future-biometric-data-privacy-laws-2022-04-06/>.

⁹⁸ *BIOMETRIC INFORMATION PRIVACY ACT (BIPA)*, ACLU IL., <https://www.aclu-il.org/en/campaigns/biometric-information-privacy-act-bipa> (last visited Jun. 5, 2024).

⁹⁹ Husch Blackwell, *Tracking U.S. State Biometric Privacy Legislation*, <https://www.huschblackwell.com/2023-state-biometric-privacy-law-tracker> (last visited Jun. 1, 2024).

¹⁰⁰ See *Biometric Data Use Expands: How to Protect Consumer Privacy, Prevent Lawsuits*, BURNS & WILCOX, LTD (Mar. 26, 2024), <https://www.burnsandwilcox.com/insights/biometric-data-use-expands-how-to-protect-consumer-privacy-prevent-lawsuits/>.