



Federal Judge Upholds Bank Exclusion from Biometric Privacy Act

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In her Order issued on November 29, 2020, a U.S. District Court Judge for the Northern District of Illinois thwarted a challenge to the constitutionality of Illinois' Biometric Information Privacy Act ("the Act") based, at least in part, on the exclusion in the Act for financial institutions.

The case involved a "smart vending machine" deployed by a vending machine company ("Company") which, with the customer's prior consent, collected a fingerprint scan of the purchaser ("Purchaser") for use at Company's vending machines. Purchaser sued Company for failure to comply with the Act's requirements for destruction of her biometric information within the time frames and standards set forth in the Act. Company raised three defenses against the suit, the first two of which related to timeliness of the lawsuit and were dismissed by the federal Judge; that left the third argument, to which the Judge gave at least some credence and therefore was the focus of her ruling. The third defense asserted by Company was that the Act should be struck down in its entirety as "special legislation" barred by the Illinois Constitution. As the Court phrased it, the State Constitution's ban on special legislation prohibits the General Assembly "from conferring a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated."

Company argued that because Section 25 of the Act exempted financial institutions and government agencies from the mandates of the Act, it was "special legislation." After initially adopting a "reasonable basis" standard for determining whether an act of the General Assembly can be upheld as *not* being special legislation and stating that the party claiming special legislation bore the burden of proof, the Court ultimately found reasonable, legitimate governmental purposes for rejecting Company's assertion of unconstitutional special legislation; specifically, she found that sovereign immunity would justify the exclusion from the Act of government agencies (because it would be a moot point if the Act permitted claims against the government that would be dismissed based on governmental immunity). With respect to banks, she concluded that such an exemption could have been reasonably justified

by the General Assembly because of already existing privacy mandates regarding customer information/data with which banks must comply.

Having rejected all of Company's arguments, the Court permitted Purchaser's lawsuit to proceed (i.e., denied Company's Motion to Dismiss) to its factual determinations as to whether Company violated its obligation to destroy Purchaser's biometric data and whether Purchaser was entitled to any damages from Company.

Feel free to contact General Counsel [Jerry Cavanaugh](#) or CBAI Paralegal [Levette Shade](#) if you want any additional information.

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