



Brazilian National Civil Identification Law

Federal Law 13,444/2017

and Draft Bill 3228/2021



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Brazilian National Civil Identification Law (Federal Law 13,444/2017) and Draft Bill 3228/2021, which proposes amendments on Law 13,444/2017

Non-official English version of the current law and the text proposed by the Federal Executive Power

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¹Data Privacy Brasil Research Association is a non-profit organization based in São Paulo. It develops projects in the intersection between fundamental rights, data protection and new technologies. See www.dataprivacybr.org.br

The current National Civil Identification Law and the Draft Bill 3228/2021

The Brazilian National Identification System (Identificação Civil Nacional - "ICN") was created in 2017 by a joint effort of the Federal Government and the Superior Electoral Court, both of which were responsible for the draft bill that established it (Federal Law 13,444/2017). It intends to provide for each citizen a national unique identity number, at the same time that the national identity document will carry other official information from other governmental identity documents. For this, a centralized database will be used, composed of the Superior Electoral Court biometric database and other ones that will be added to it. In this architecture, the Superior Electoral Court is the main controlling agent of the ICN database.

Considering the current informational architecture of the ICN, here are some points which are especially concerning, from a personal data protection point of view:

1. Centralization of databases, which include biometric data;
2. Facilitated access, legally established, to the ICN database by any agency of the Executive and Legislative powers, at all federal, state and municipal levels;
3. The existence of sensitive data collected for other purposes rather than the ICN originally, especially biometric data that composed the Superior Electoral Court's database, which is now used as the ICN's main database;
4. Recent security incidents involving Brazilian Government databases².

Notwithstanding the concerning points listed above, a Draft Bill was presented to the Congress by the federal Government on September 20th 2021, aiming to amend the ICN Law. According to the federal Government, the goals of the proposed alterations were to amplify the integration between the powers; to accelerate the project to safely and digitally identify all Brazilians; to create more options of partnerships between public and private entities; to ensure the participation of a representative of the states in the composition of the ICN Steering Committee; and to facilitate the operationalization of the ICN fund, ensuring the financial viability of the project³.

² See more in: <https://www.theverge.com/2020/12/3/22150973/brazilian-ministry-of-health-leak-medical-records-personal-information>

³ See in: <https://www.gov.br/economia/pt-br/assuntos/noticias/2021/setembro/presidente-envia-ao-congresso-projeto-que-altera-lei-da-identificacao-civil-nacional>

The most significant changes proposed to the ICN Law intend to alter its articles 2 and 3, allowing the ICN database to be either replicated in the computer system of the Federal Executive Power⁴, or integrated in the database of the executive power of other government levels, including biometric data, as long as there is a legal agreement authorizing it⁵. From a data protection perspective, this raises concerns relating to the security of the data, whether there will be the same level of security in the new databases, as well as principles of purpose limitation and data minimisation.

There is also a proposed alteration to article 2 to allow for the Superior Electoral Court to establish agreements, contracts, partnerships or instruments alike with private entities for the maintenance of the ICN database⁶, as well as to provide to private parties verification services involving biometric data⁷. The involvement of private entities with a public database, containing data of over 120 million people, 56,3% of the Brazilian population⁸, is to be looked upon carefully, as to ensure that the public interest and the data protection rights of the data subjects are preserved over commercial and market interests.

Below, you will find the non-official translation of the current National Civil Identification Law and of the Draft Bill 3228/2021.

4 Art. 2, §1 of ICN Law, as proposed in the draft bill.

5 Art. 3, §1-A of ICN Law, as proposed in the draft bill.

6 Art. 2, §1 e §3 of ICN Law, as proposed in the draft bill.

7 Art. 3, §2 and art. 2º, §3 of ICN Law, as proposed in the draft bill.

8 See in: <https://www.camara.leg.br/noticias/809660-pandemia-acelera-o-uso-de-servicos-publicos-digitais/>

Bill 13.444, published on May 11th 2017
Rules on the National Civil Identification (ICN)

Art. 1

The National Civil Identification (ICN) is hereby created, with the objective of identifying Brazilians in their relations with society and with governmental and private agencies and entities.

Art. 2

The ICN shall use:

- I. the biometric database of the Electoral Justice;
- II. the database of the National Civil Register Information System (Sirc) created by the Federal Executive Power, and of the National Civil Register Information Center (CRC Nacional), established by the National Council of Justice, in fulfillment of article 41 of Law n. 11.977, from July 7th 2009;
- III. other information, unavailable in the Sirc, contained in databases of the Electoral Justice, the identification institutes of the States and the Federal District, or the National Identification Institute, or made available by other bodies, as defined by the ICN Steering Committee.

§ 1 The ICN database will be stored and managed by the Superior Electoral Court, which will keep it up to date and adopt the necessary measures to ensure the integrity, availability, authenticity and confidentiality of its content and interoperability among governmental electronic systems.

§ 2 The interoperability referred to in § 1 of this article will observe the applicable legislation and the technical architectural recommendations of the Electronic Government Interoperability Standards (e-Ping).

Art. 3

The Superior Electoral Court will guarantee the Executive and Legislative powers of the Union, the States, the Federal District, and the Municipalities access to the ICN database, free of charge, except for the electoral information.

§ 1 The Executive power of the federative units may integrate the information from the ICN database into its own databases, with the exception of biometric data.

§ 2 A Superior Electoral Court Act will rule on the integration of biometric records by the Federal and Civil Police, with exclusivity, to their databases.

Art. 4

It is forbidden to commercialize parts or the totality of the ICN database.

§ 1 (VETOED)

§ 2 The aforementioned in the caput does not forbid the provision of verification services involving biometric data to private parties, which shall be provided exclusively by the Superior Electoral Court.

Art. 5

It is hereby created the ICN Steering Committee.

§ 1 The ICN Steering Committee will be composed by:

- I. 3 (three) representatives from the Federal Executive Power;
- II. 3 (three) representatives from the Superior Electoral Court;
- III. 1 (one) representative from the Chamber of Deputies;
- IV. 1 (one) representative from the Federal Senate;
- V. 1 (one) representative from the National Council of Justice;

§ 2 The ICN Steering Committee is responsible for:

- I. recommending:
 - a) the ICN biometric standard;
 - b) the ICN number formation rule;
 - c) the standard and the necessary documents for the expedition of the National Identity Document (DNI)
 - d) the technical and economic-financial standards for the provision of data verification services involving biometrics;
 - e) the guidelines for the administration of the National Civil Identification Fund (FICN) and for the management of its resources;
- II. guiding the implementation of interoperability between the electronic systems of the federal Executive Power and the Electoral Justice;
- III. establishing statute.

§ 3 The decisions of the ICN Steering Committee will be withdrawn by a majority of 2/3 (two thirds) of its members.

§ 4 The ICN Steering Committee may create technical groups, with equal participation from the Federal Executive Power, the Federal Legislative Power and the Superior Electoral Court, to advise it in

its activities.

§ 5 The participation in the ICN Steering Committee and in its technical groups shall be considered a relevant public service, unpaid.

§ 6 The coordination of the ICN Steering Committee will alternate between representatives of the Federal Executive Power and the Superior Electoral Court, according to statute.

Art. 6

The National Civil Identification Fund (FICN) is created, of accounting nature, managed and administered by the Superior Electoral Court, with the purpose of constituting a source of resources for the development and maintenance of the ICN and the bases used by it.

§ 1 The resources of FICN are composed of:

- I. those allocated to it in the Federal budget specifically for the purposes of this Law, which shall not be confused with the resources in the Electoral Justice budget;
- II. the result of financial investments on the directly collected revenues;
- III. the revenue from the provision of the data verification service;
- IV. other resources that are destined to it, such as those arising from agreements and similar instruments or donations.

§ 2 The FICN will be managed by the Superior Electoral Court, observing the guidelines established by the ICN Steering Committee.

§ 3 The positive balance of the FICN calculated in the balance sheet will be transferred to the following year, to the credit of the same fund.

§ 4 Observing the guidelines established by the ICN Steering Committee, the FICN shall guarantee the operation, integration, standardization, and interoperability of the biometric databases within the Union.

Art. 7

The Superior Electoral Court shall establish a schedule for the implementation stages of the ICN and the collection of biometric information.

Art. 8

The National Identity Document (DNI) is created, with public faith and valid nationwide.

§ 1 The DNI is proof of all the data included therein, dismissing the need to present the documents

that gave rise to it or that were mentioned in it.

§ 2 (VETOED)

§ 3 The DNI shall be issued:

- I. by the Electoral Justice;
- II. by the civil identification institutes of the States and the Federal District, with certification from the Electoral Justice;
- III. by other bodies, by means of delegation of the Superior Electoral Court, with certification from the Electoral Justice.

§ 4 The DNI may replace the electoral card, observing the legislation on electoral registration, in the form regulated by the Superior Electoral Court.

§ 5 (VETOED)

Art. 9

The enrollment number in the Individual Taxpayer Registry (CPF) will be incorporated, free of charge, into the civil identity documents of the Union, the States, and the Federal District.

Art. 10

The document issued by a professional entity shall only be validated if it meets the biometrics and photo requirements established for the DNI.

Paragraph. Professional entities will have two (2) years to adapt their documents to the requirements established for the DNI.

Art. 11

The public authorities shall offer mechanisms that make it possible to cross-reference information from official databases, based on the applicant's CPF number, so that the granting agency can verify compliance with eligibility requirements for the granting and maintenance of social benefits.

Art. 12

The Federal Executive Power and the Superior Electoral Court shall edit, within the scope of their competencies, complementary acts for the execution of the provisions of this Law.

Art. 13

This Law comes into force on the date of its publication.

Draft Bill 3228/2021

Amends the Law 13.444, published on May 11th 2017, which rules on the National Civil Identification – ICN

The National Congress decrees

Art. 1

The Law 13.444, published on May 11th 2017, shall come into force with the following amendments

Art. 2

§ 1 The ICN's database will be stored and managed by the Superior Electoral Court, which shall keep it up to date and adopt necessary measures to guarantee the integrity, availability, authenticity and confidentiality of its content, and the interoperability among the governments' electronic systems, granted the Superior Electoral Court the power to replicate the database in other computational environments from the Federal Executive Power.

.....

§ 3 The Superior Electoral Court may firm agreements, contracts, partnerships or instruments alike with agencies and entities, public or private, for the execution of the activities described in §1.

Art. 3

§ 1 The Executive power from the federative units may integrate into its own databases the information from the ICN's database, with the exception of the biometric data.

§ 1-A The aforementioned in §1 may apply to biometric data when expressly authorized on the instrument described in the §3 of art. 2.

Art. 4

§ 2 The aforementioned in the caput does not forbid the provision of verification services involving biometric data to private parties, which shall be provided exclusively by the Superior Electoral Court or in the terms of the §3 of art. 2.

Art. 5

§ 1

- V. 1 (one) representative from the National Council of Justice; and
- VI. 1 (one) representative from the States and the Federal District, nominated by the State Minister of Justice and Public Security
- VII.

Art. 6 The National Civil Identification Fund (FICN), of accounting nature, is managed by agency of the Federal Executive Power established by act of the President of the Republic.

§ 1

I. those allocated in the Union budget specifically for the purposes of this Law;

.....

§ 2 The resources of the FICN shall be used to cover expenses from actions related to the development and maintenance of the ICN, as well as of the databases used by it, in compliance with the guidelines established by the ICN Steering Committee.

Art. 8

§ 3

I-A by the Federal Executive Power, with certification from the Electoral Justice

Art. 2

The National Civil Identification Fund (FICN), disciplined in the Law n. 13.444, from 2017, is transferred to the Federal Executive Power.

Art. 3

The resources disciplined in the items II e III of §1 from art.6 of the Law n.13.444, from 2017, are tied for 5 years, counting from the coming into force of this Law.

Art. 4

Section IV of §1 from art.6 of the Law n. 13.444, from 2017, is hereby revoked.

Art. 5

This Law comes into force on the date of its publication.