

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 356 Session of 2011

INTRODUCED BY KITCHEN, FOLMER, WOZNIAK, ERICKSON, KASUNIC,
D. WHITE, LEACH, ALLOWAY, BOSCOLA, EARLL, PIPPY, WILLIAMS,
M. WHITE, STACK, FONTANA, ORIE, COSTA, WAUGH, FARNESE AND
FERLO, FEBRUARY 1, 2011

REFERRED TO COMMUNICATIONS AND TECHNOLOGY, FEBRUARY 1, 2011

AN ACT

1 Providing for biometric protection and for penalties.

2 The General Assembly of the Commonwealth of Pennsylvania

3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Right to Body
6 Data Privacy Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Biometric data." Information relating to a biological
12 characteristic of an individual that makes that individual
13 unique from any other individual, including the following:

14 (1) Fingerprints, palm prints and other means for
15 measuring or recording ridge pattern or fingertip
16 characteristics.

1 (2) Facial feature pattern characteristics, excluding
2 any low resolution photographic image of a face.

3 (3) Voice data collected for comparing live speech with
4 a previously created speech model of an individual's voice.

5 (4) Iris recognition data containing color or texture
6 patterns or codes.

7 (5) Keystroke dynamics, measuring pressure applied to
8 key pads.

9 (6) Hand geometry, measuring hand characteristics,
10 including the shape and length of fingers, in three
11 dimensions.

12 (7) Retinal scans or reading through the pupil to
13 measure blood vessels lining the retina.

14 (8) Deoxyribonucleic acid or ribonucleic acid.

15 "Government agency." Any government entity or agent of a
16 government entity, including the Commonwealth or any political
17 subdivision as defined under 1 Pa.C.S. § 1991 (relating to
18 definitions).

19 "Low resolution photographic image of a face." A
20 photographic image of a face or a portion of a face with
21 resolution no greater than necessary for human identification
22 and verification, including photo images with a resolution that
23 enables the extraction of biometric data.

24 Section 3. Denial of benefits.

25 (a) General rule.--It shall be unlawful for any government
26 agency to deny to any individual any right, benefit or privilege
27 provided by law because of the individual's refusal to disclose
28 the individual's biometric data.

29 (b) Exceptions.--

30 (1) Except as provided under paragraph (2), the

provisions of subsection (a) shall not apply to any disclosure of biometric data which is required by any of the following:

(i) Any Federal statute finally enacted on or before May 10, 2005.

(ii) Any State statute finally enacted on or before the effective date of this section.

(2) The provisions of paragraph (1) shall not apply to any disclosure of biometric data:

(i) Required pursuant to arrest or indictment.

(ii) Requested by any law enforcement agency or officer with probable cause that the individual has committed a crime.

(c) Explanation.--Any government agency which requests an individual to disclose the individual's biometric data shall inform that individual whether the disclosure is mandatory or voluntary, by what statutory or other authority the data is solicited and what uses will be made of the data.

Section 4. Remedy.

Any individual whose biometric data is collected in violation of this act may bring an action in the court of common pleas for enforcement of the remedies available under this section. If the individual prevails, the court shall order the government agency to do all of the following:

(1) Remove the biometric data collected in violation of this act from any database or other means of storage so that the biometric data is not retained by the government agency.

(2) Pay the individual's reasonable attorney fees and costs of litigation.

(3) Pay the greater of \$100 per collection in violation

1 of this act or actual damages.

2 Section 5. Penalties.

3 (a) Summary offense.--A government agency or an employee of
4 a government agency who violates this act with the intent and
5 purpose of violating this act commits a summary offense subject
6 to prosecution by the Attorney General or the appropriate
7 district attorney and shall, upon conviction, be sentenced to
8 pay a fine of not more than \$300 plus costs of prosecution.

9 (b) Civil penalty.--A government agency or an employee of a
10 government agency who does not promptly comply with a court
11 order under section 4 is subject to a civil penalty of not more
12 than \$300 per day until the biometric data are removed.

13 Section 20. Effective date.

14 This act shall take effect in 60 days.