

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1175 Session of 2009

INTRODUCED BY JOSEPHS, RAPP, ROAE, CREIGHTON, REICHLLEY, FRANKEL, GIBBONS, GEORGE, DENLINGER, KAUFFMAN, KORTZ, MELIO, PRESTON, WHEATLEY, YOUNGBLOOD AND MURT, APRIL 3, 2009

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 17, 2009

AN ACT

1 Providing for identification devices and for subcutaneous  
2 implanting; and imposing civil penalties.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the  
7 Identification Device Act.

8 Section 2. Definitions.

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

12 "Identification device." Any item, application or product  
13 that is passively or actively capable of transmitting personal  
14 information, including, but not limited to, devices using radio  
15 frequency technology.

16 "Person." An individual, business association, partnership,  
17 limited partnership, corporation, limited liability company,

1 trust, estate, cooperative association or other entity.

2 "Personal information." Includes any of the following data  
3 elements to the extent that they are used alone or in  
4 conjunction with any other information used to identify an  
5 individual:

6 (1) First or last name.

7 (2) Address.

8 (3) Telephone number.

9 (4) E-mail, Internet protocol or Internet website  
10 address.

11 (5) Date of birth.

12 (6) Driver's license number or State identification card  
13 number.

14 (7) Bank, credit card or other financial institution  
15 account number.

16 (8) Any unique personal identifier contained or encoded  
17 on a health insurance, health benefit or benefit card or  
18 record issued in conjunction with any government-supported  
19 aid program.

20 (9) Religion.

21 (10) Ethnicity or nationality.

22 (11) Photograph.

23 (12) Fingerprint or other biometric identifier.

24 (13) Social Security number.

25 (14) Any unique personal identifier.

26 "Require, coerce or compel." Includes physical violence,  
27 threat, intimidation, retaliation, the conditioning of any  
28 private or public benefit or care on consent to implantation,  
29 including employment, promotion or other employment benefit, or  
30 by any means that causes a reasonable person of ordinary

1 susceptibilities to acquiesce to implantation when the person  
2 otherwise would not.

3 "Subcutaneous." Existing, performed or introduced under or  
4 on the skin.

5 Section 3. General ~~rule~~ RULES. ←

6 A THE FOLLOWING GUIDELINES SHALL APPLY: ←

7 (1) A person shall not require, coerce or compel any  
8 other individual to undergo the subcutaneous implanting of an  
9 identification device.

10 (2) NO DEVICE SHALL BE IMPLANTED OR INCORPORATED INTO ←  
11 THE BODY WITHOUT THE FULLY INFORMED WRITTEN CONSENT OF THE  
12 INDIVIDUAL. THE CONSENT OF A GUARDIAN, PARENT OR ATTORNEY  
13 SHALL NOT CONSTITUTE CONSENT.

14 (3) AN INDIVIDUAL MUST BE AT LEAST 18 YEARS OF AGE AND  
15 OF SHOULD MIND TO UNDERGO IMPLANTATION OF AN IDENTIFICATION  
16 DEVICE.

17 (4) NO ENTITY SHALL USE THE ABSENCE OF AN IDENTIFICATION  
18 DEVICE AS A BASIS FOR DISCRIMINATION FOR ANY PURPOSE,  
19 INCLUDING, BUT NOT BE LIMITED TO, HOUSING, EMPLOYMENT, VOTING  
20 AND MEDICAL CARE.

21 Section 4. Penalties.

22 (1) Any person who violates this act is subject to civil  
23 penalties of up to \$10,000. The civil penalty shall be no  
24 more than \$1,000 for each day the violation continues until  
25 the deficiency is corrected. That civil penalty may be  
26 assessed and recovered in a civil action brought in any court  
27 of competent jurisdiction. The court may also grant a  
28 prevailing plaintiff reasonable attorney fees and litigation  
29 costs, including, but not limited to, expert witness fees and  
30 expenses as part of the costs.

1           (2) A person who is implanted with a subcutaneous  
2 identification device in violation of this act may bring a  
3 civil action for actual damages, compensatory damages,  
4 punitive damages, injunctive relief, any combination of those  
5 or any other appropriate relief.

6           (3) Punitive damages may also be awarded upon proof of  
7 the defendant's malice, oppression, fraud or duress in  
8 requiring, coercing or compelling the plaintiff to undergo  
9 the subcutaneous implanting of an identification device.

10 Section 5. Limitations.

11           (1) An action brought pursuant to this section shall be  
12 commenced within three years of the date upon which the  
13 identification device was implanted.

14           (2) If the victim was a dependent adult or minor when  
15 the implantation occurred, actions brought pursuant to this  
16 section shall be commenced within three years after the date  
17 the plaintiff, or the plaintiff's guardian or parent,  
18 discovered or reasonably should have discovered the implant,  
19 or within eight years after the plaintiff attains the age of  
20 majority, whichever date occurs later.

21           (3) The statute of limitations shall not run against a  
22 dependent adult or minor plaintiff simply because a guardian  
23 ad litem has been appointed. A guardian ad litem's failure to  
24 bring a plaintiff's action within the applicable limitation  
25 period will not prejudice the plaintiff's right to do so.

26           (4) A defendant is estopped to assert a defense of the  
27 statute of limitations when the expiration of the statute is  
28 due to conduct by the defendant inducing the plaintiff to  
29 delay filing of the action, or due to threats made by the  
30 defendant causing duress upon the plaintiff.

1 Section 6. Restitution.

2 Any restitution paid by the defendant to the victim shall be  
3 credited against any judgment, award or settlement obtained  
4 pursuant to this section. Any judgment, award or settlement  
5 obtained pursuant to an action under this section shall be  
6 subject to the provisions of 42 Pa.C.S. (relating to Judiciary  
7 and Judicial Procedure).

8 Section 7. Privacy.

9 The provisions of this act shall be liberally construed so as  
10 to protect privacy and bodily integrity.

11 Section 8. Independent action.

12 Actions brought pursuant to this act are independent of any  
13 other actions, remedies or procedures that may be available to  
14 an aggrieved party pursuant to any other law.

15 Section 9. Existing law.

16 This section shall not in any way modify existing statutory  
17 or case law regarding the rights of parents or guardians, the  
18 rights of children or minors or the rights of dependent adults.

19 Section 10. Effective date.

20 This act shall take effect in 60 days.