

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1175** Session of  
2009

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INTRODUCED BY JOSEPHS, RAPP, ROAE, CREIGHTON, REICHLLEY, FRANKEL,  
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WHEATLEY, YOUNGBLOOD AND MURT, APRIL 3, 2009

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 22, 2009

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## 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 rules.

6 ~~The~~ (A) GUIDELINES.--EXCEPT AS OTHERWISE PROVIDED IN  
7 SUBSECTION (B), THE following guidelines shall apply: ←

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

11 (2) No device shall be implanted or incorporated into  
12 the body without the fully informed written consent of the  
13 individual. The consent of a guardian, parent or attorney  
14 shall not constitute consent.

15 (3) An individual must be at least 18 years of age and  
16 of ~~should~~ SOUND mind to undergo implantation of an ←  
17 identification device.

18 (4) No entity shall use the absence of an identification  
19 device as a basis for discrimination for any purpose,  
20 including, but not be limited to, housing, employment, voting  
21 and medical care.

22 (B) NONAPPLICABILITY.--THIS ACT SHALL NOT APPLY TO ANY OF ←  
23 THE FOLLOWING:

24 (1) AN INDIVIDUAL WHO IS ORDERED BY A FEDERAL OR STATE  
25 COURT TO BE IMPLANTED AS PART OF A SENTENCE OR AS A CONDITION  
26 OF PROBATION OR PAROLE.

27 (2) AN INDIVIDUAL WHO WAS DETAINED BY THE FEDERAL  
28 GOVERNMENT AT A FACILITY LOCATED IN CUBA DURING THE TIME  
29 PERIOD BEGINNING SEPTEMBER 11, 2001, AND ENDING DECEMBER 31,  
30 2010.

1 Section 4. Penalties.

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

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

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

20 Section 5. Limitations.

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

24 (2) If the victim was a dependent adult or minor when  
25 the implantation occurred, actions brought pursuant to this  
26 section shall be commenced within three years after the date  
27 the plaintiff, or the plaintiff's guardian or parent,  
28 discovered or reasonably should have discovered the implant,  
29 or within eight years after the plaintiff attains the age of  
30 majority, whichever date occurs later.

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

6 (4) A defendant is estopped to assert a defense of the  
7 statute of limitations when the expiration of the statute is  
8 due to conduct by the defendant inducing the plaintiff to  
9 delay filing of the action, or due to threats made by the  
10 defendant causing duress upon the plaintiff.

11 Section 6. Restitution.

12 Any restitution paid by the defendant to the victim shall be  
13 credited against any judgment, award or settlement obtained  
14 pursuant to this section. Any judgment, award or settlement  
15 obtained pursuant to an action under this section shall be  
16 subject to the provisions of 42 Pa.C.S. (relating to Judiciary  
17 and Judicial Procedure).

18 Section 7. Privacy.

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

21 Section 8. Independent action.

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

25 Section 9. Existing law.

26 ~~This section~~ EXCEPT FOR SECTION 3(A) (3), THIS ACT shall not  
27 in any way modify existing statutory or case law regarding the  
28 rights of parents or guardians, the rights of children or minors  
29 or the rights of dependent adults.

30 Section 10. Effective date.



1        This act shall take effect in 60 days.