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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, REICHLEY, FRANKEL,  
GIBBONS, GEORGE, DENLINGER, KAUFFMAN, KORTZ, MELIO, PRESTON,  
WHEATLEY, YOUNGBLOOD AND MURT, APRIL 3, 2009

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SENATOR FOLMER, COMMUNICATIONS AND TECHNOLOGY, IN SENATE, AS  
AMENDED, JUNE 9, 2010

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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,

1 limited partnership, corporation, limited liability company,  
2 trust, estate, cooperative association or other entity.

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

7 (1) First or last name.

8 (2) Address.

9 (3) Telephone number.

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

12 (5) Date of birth.

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

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

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

21 (9) Religion.

22 (10) Ethnicity or nationality.

23 (11) Photograph.

24 (12) Fingerprint or other biometric identifier.

25 (13) Social Security number.

26 (14) Any unique personal identifier.

27 "Require, coerce or compel." Includes physical violence,  
28 threat, intimidation, retaliation, the conditioning of any  
29 private or public benefit or care on consent to implantation,  
30 including employment, promotion or other employment benefit, or

1 by any means that causes a reasonable person of ordinary  
2 susceptibilities to acquiesce to implantation when the person  
3 otherwise would not.

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

6 Section 3. General rules.

7 ~~(a) Guidelines. Except as otherwise provided in subsection~~ ←

8 ~~(b), the~~ THE following guidelines shall apply: ←

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

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

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

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

23 ~~(b) Nonapplicability. This act shall not apply to any of~~ ←  
24 ~~the following:~~

25 ~~(1) An individual who is ordered by a Federal or State~~  
26 ~~court to be implanted as part of a sentence or as a condition~~  
27 ~~of probation or parole.~~

28 ~~(2) An individual who was detained by the Federal~~  
29 ~~Government at a facility located in Cuba during the time~~  
30 ~~period beginning September 11, 2001, and ending December 31,~~

1     ~~2010.~~

2 Section 4. Penalties.

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

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

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

21 Section 5. Limitations.

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

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

1 majority, whichever date occurs later.

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

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

12 Section 6. Restitution.

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

19 Section 7. Privacy.

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

22 Section 8. Independent action.

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

26 Section 9. Existing law.

27 ~~Except for section 3(A)(3), this~~ THIS act shall not in any  
28 way modify existing statutory or case law regarding the rights  
29 of parents or guardians, the rights of children or minors or the  
30 rights of dependent adults.



1 Section 10. Effective date.

2 This act shall take effect in 60 days.