

1 AN ACT relating to violations of privacy.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Identification device" means any item, application, or product that is*
7 *passively or actively capable of transmitting personal information,*
8 *including but not limited to devices using radio frequency technology or any*
9 *electronic device used to track, harass, or download information without*
10 *permission;*

11 *(b) "Personal information" means any of the following data elements to the*
12 *extent they are alone or in conjunction with any other information that can*
13 *identify an individual:*

14 *1. E-mail, Internet protocol, or Web site address;*

15 *2. Date of birth;*

16 *3. Operator's license number or personal identification card number;*

17 *4. Any unique personal identifier number contained or encoded in an*
18 *operator's license or personal identification card issued;*

19 *5. Bank, credit card, or other financial institution account number;*

20 *6. Any unique personal identifier contained or encoded in a health*
21 *insurance, health benefit, or benefit card, or record issued in*
22 *conjunction with any government-supported aid program;*

23 *7. Religion;*

24 *8. Ethnicity or nationality;*

25 *9. Photograph;*

26 *10. Fingerprint or other biometric identifier;*

27 *11. Social Security number; or*

1 12. Any other unique personal identifier;

2 (c) "Require, coerce, or compel" means any physical violence, threat,
3 intimidation, or retaliation, or the conditioning of any private or public
4 benefit or care on consent to implantation, including employment,
5 promotion, or other employment benefit, or any means that cause a
6 reasonable person of ordinary susceptibilities to acquiesce to implantation
7 when he or she otherwise would not, but does not include legitimate medical
8 uses for which the patient or his or her guardian or parent has consented;
9 and

10 (d) "Subcutaneous" means existing, performed, or introduced under or on the
11 skin.

12 (2) No person shall:

13 (a) Require, coerce, or compel any other individual to undergo the
14 subcutaneous implanting of an identification device; or

15 (b) Implant an identification device subcutaneously without the consent of the
16 person in whom the identification device is implanted.

17 (3) Any person who violates subsection (2) of this section may be assessed an initial
18 civil penalty of no more than ten thousand dollars (\$10,000) and no more than
19 one thousand dollars (\$1,000) for each day the violation continues until the
20 deficiency is corrected. That civil penalty may be assessed and recovered in a civil
21 action brought in any court of competent jurisdiction. The court may also grant a
22 prevailing plaintiff reasonable attorney's fees and litigation costs, including but
23 not limited to expert witness fees and expenses as part of the costs.

24 (4) A person who is implanted with a subcutaneous identification device in violation
25 of subsection (2) of this section may bring a civil action for actual damages,
26 compensatory damages, punitive damages, injunctive relief, any combination of
27 those, or any other appropriate relief.

- 1 (5) In addition to the damages and relief authorized in subsection (4) of this section,
2 punitive damages may also be awarded upon proof of the defendant's malice,
3 oppression, fraud, or duress in requiring, coercing, or compelling the plaintiff to
4 undergo the subcutaneous implanting of an identification device.
- 5 (6) An action brought under this section shall be commenced within three (3) years
6 of the date upon which the identification device was implanted.
- 7 (7) For purposes of implantation only, any interested person may file a petition for
8 an order or judgment declaring an incompetent person or minor free from the
9 control of a parent or guardian who is requiring or preventing implantation of an
10 identification device. The court shall consider that petition in light of applicable
11 law with respect to the best interests of the incompetent person or minor.
- 12 (8) Any restitution paid by the defendant to the victim shall be credited against any
13 judgment, award, or settlement obtained under this section.
- 14 (9) This section shall be liberally construed so as to protect privacy and bodily
15 integrity.
- 16 (10) Actions brought under this section are independent of any other actions,
17 remedies, or procedures that may be available to an aggrieved party under any
18 other law.
- 19 (11) This section shall not in any way modify existing statutory or case law regarding
20 the rights of parents or guardians, the rights of children or minors, or the rights
21 of dependent adults.
- 22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
23 READ AS FOLLOWS:
- 24 (1) As used in this section, unless context requires otherwise:
- 25 (a) "Facial recognition technology" means computerized technology that helps
26 in discerning and identifying human faces, using biometrics to map facial
27 features from a photo or video and comparing this information with a large

1 database of recorded faces;

2 (b) 1. "Biometric identifier" means a retina or iris scan, fingerprint,
3 voiceprint, or scan of hand or face geometry.

4 2. Biometric identifiers do not include:

5 a. Writing samples, written signatures, photographs, human
6 biological samples used for valid scientific testing or screening,
7 demographic data, tattoo descriptions, or physical descriptions
8 such as height, weight, hair color, or eye color;

9 b. Donated organs, tissues, or blood or serum stored on behalf of
10 recipients or potential recipients of living or cadaveric
11 transplants and obtained or stored by a federally designated
12 organ procurement agency;

13 c. Biological materials regulated under the Genetic Information
14 Privacy Act;

15 d. Information captured from a patient in a health care setting or
16 information collected, used, or stored for health care treatment,
17 payment, or operations under the federal Health Insurance
18 Portability and Accountability Act of 1996; and

19 e. Any X-ray, roentgen process, computed tomography, MRI, PET
20 scan, mammography, or other image or film of the human
21 anatomy used to diagnose or treat an illness or other medical
22 condition or to further validate scientific testing or screening;

23 (c) "Biometric information" means any information, regardless of how it is
24 captured, converted, stored, or shared, based on an individual's biometric
25 identifier used to identify an individual. Biometric information does not
26 include information derived from items or procedures excluded under the
27 definition of biometric identifiers; and

- 1 (d) "Confidential and sensitive information" means personal information that
2 can be used to uniquely identify an individual or an individual's account or
3 property. Examples of confidential and sensitive information include but
4 are not limited to a genetic marker, genetic testing information, a unique
5 identifier number to locate an account or property, an account number, a
6 PIN number, a pass code, a driver's license number, or a social security
7 number.
- 8 (2) It is unlawful, absent a court-approved warrant, for any state or local government
9 agency, or an official thereof, to obtain, retain, request, access, or use:
- 10 (a) Facial recognition technology; or
11 (b) Information obtained from or by use of facial recognition.
- 12 (3) Once a person is accepted by law enforcement as being a missing person or child,
13 facial recognition technology may be used if there is video or a real time feed
14 available, provided a proven family member or court-approved guardian gives
15 written consent for the use of facial recognition technology.
- 16 (4) Photographs taken by the Transportation Cabinet, or by any other agency, in
17 order to issue operators' licenses or personal identification cards shall not be sold
18 to any entity, and shall not be provided to any state or local government agency
19 for the purpose of using facial recognition technology without a warrant.
- 20 (5) A private entity in possession of biometric identifiers or biometric information
21 must develop a written policy, made available to the public, establishing a
22 retention schedule and guidelines for permanently destroying biometric
23 identifiers and biometric information when the initial purpose for collecting or
24 obtaining such identifiers or information has been satisfied or within three (3)
25 years of the individual's last interaction with the private entity, whichever occurs
26 first. Absent a valid warrant or subpoena issued by a court of competent
27 jurisdiction, a private entity in possession of biometric identifiers or biometric

1 information must comply with its established retention schedule and destruction
2 guidelines.

3 (6) No private entity may collect, capture, purchase, receive through trade, or
4 otherwise obtain a person's or a customer's biometric identifier or biometric
5 information, unless it first:

6 (a) Informs the subject or the subject's legally authorized representative in
7 writing that a biometric identifier or biometric information is being
8 collected or stored;

9 (b) Informs the subject or the subject's legally authorized representative in
10 writing of the specific purpose and length of term for which a biometric
11 identifier or biometric information is being collected, stored, and used; and

12 (c) Receives a written release executed by the subject of the biometric identifier
13 or biometric information or the subject's legally authorized representative.

14 (7) No private entity in possession of a biometric identifier or biometric information
15 may sell, lease, trade, or otherwise profit from a person's or a customer's
16 biometric identifier or biometric information.

17 (8) No private entity in possession of a biometric identifier or biometric information
18 may disclose, redisclose, or otherwise disseminate a person's or a customer's
19 biometric identifier or biometric information unless:

20 (a) The subject of the biometric identifier or biometric information or the
21 subject's legally authorized representative consents to the disclosure or
22 redisclosure;

23 (b) The disclosure or redisclosure completes a financial transaction requested
24 or authorized by the subject of the biometric identifier or the biometric
25 information or the subject's legally authorized representative;

26 (c) The disclosure or redisclosure is required by law; or

27 (d) The disclosure is required pursuant to a valid warrant or subpoena issued

1 by a court of competent jurisdiction.

2 (9) A private entity in possession of a biometric identifier or biometric information
3 shall store, transmit, and protect from disclosure all biometric identifiers and
4 biometric information:

5 (a) Using the reasonable standard of care within the private entity's industry;
6 and

7 (b) In a manner that is the same as or more protective than the manner in
8 which the private entity stores, transmits, and protects other confidential
9 and sensitive information.

10 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
11 READ AS FOLLOWS:

12 (1) Any violation of Section 2 of this Act constitutes an injury and any person may
13 institute proceedings for injunctive relief, declaratory relief, or writ of mandate in
14 any court of competent jurisdiction to enforce Section 2 of this Act.

15 (2) Any person who has been subjected to facial recognition in violation of Section 2
16 of this Act, or about whom information has been obtained, retained, accessed, or
17 used in violation of Section 2 of this Act, may institute proceedings in any court
18 of competent jurisdiction.

19 (3) A prevailing party may recover for each violation:

20 (a) Against an entity that negligently violates a provision of Section 2 of this
21 Act, liquidated damages of \$1,000 or actual damages, whichever is greater;

22 (b) Against an entity that intentionally or recklessly violates a provision of
23 Section 2 of this Act, liquidated damages of \$5,000 or actual damages,
24 whichever is greater;

25 (c) Reasonable attorneys' fees and costs, including expert witness fees and
26 other litigation expenses; and

27 (d) Other relief, including an injunction, as the court may deem appropriate.

1 (4) The Attorney General may bring an action to enforce Section 2 of this Act. In any
2 action brought by the Attorney General, a violation of Section 2 of this Act is
3 subject to a civil penalty of \$1,000 for each violation.

4 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO
5 READ AS FOLLOWS:

6 No information obtained from or by use of facial recognition may be received in
7 evidence in any trial, hearing, or other proceeding in or before any court, grand jury,
8 department, officer, agency, regulatory body, legislative committee, or other authority.