

## CHAPTER 169

( HB 502 )

AN ACT relating to genetic information.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

(a) *"Biological sample" means any material part of the human, discharge therefrom, or derivative thereof, such as tissue, blood, urine, or saliva, known to contain deoxyribonucleic acid (DNA);*

(b) *"Consumer" means an individual who is a resident of the state;*

(c) 1. *"Direct-to-consumer genetic testing company" means an entity that:*

a. *Offers genetic testing products or services directly to a consumer; or*

b. *Collects, uses, or analyzes genetic data that resulted from a direct-to-consumer genetic testing product or service and was provided to the company by a consumer.*

2. *"Direct-to-consumer genetic testing company" does not include any entity only when they are engaged in collecting, using, or analyzing genetic data or biological samples in the context of research, as defined in 45 C.F.R. sec. 164.501, conducted in accordance with the Federal Policy for the Protection of Human Subjects, 45 C.F.R. pt. 46, the Good Clinical Practice Guideline issued by the International Council for Harmonisation, or the United States Food and Drug Administration Policy for the Protection of Human Subjects under 21 C.F.R. pts. 50 and 56;*

(d) *"Express consent" means a consumer's affirmative response, or the affirmative response of a consumer's legal guardian, attorney-in-fact, health care surrogate, or authorized representative, to a clear, meaningful, and prominent notice regarding the collection, use, or disclosure of genetic data for a specific purpose;*

(e) 1. *"Genetic data" means any data, regardless of its format, that concerns a consumer's genetic characteristics and includes but is not limited to:*

a. *Raw sequence data that result from a sequencing of a consumer's complete extracted or a portion of the extracted DNA;*

b. *Genotypic and phenotypic information that results from analyzing the raw sequence data; and*

c. *Self-reported health information that a consumer submits to a company regarding the consumer's health conditions and that is used for scientific research or product development and analyzed in connection with the consumer's raw sequence data.*

2. *"Genetic data" does not include deidentified data;*

(f) *"Genetic testing" means any laboratory test of a consumer's complete DNA, regions of DNA, chromosomes, genes, or gene products to determine the presence of genetic characteristics of a consumer; and*

(g) *"Person" has the same meaning as KRS 446.010.*

(2) *To safeguard the privacy, confidentiality, security, and integrity of a consumer's genetic data, a direct-to-consumer genetic testing company shall:*

(a) *Provide clear and complete information regarding the company's policies and procedures for collection, use, or disclosure of genetic data by making available to a consumer:*

1. *A high-level privacy policy overview that includes basic, essential information about the company's collection, use, or disclosure of genetic data; and*

2. *A prominent, publicly available privacy notice that includes, at a minimum, information about the company's data collection, consent, use, access, disclosure, transfer, security, and retention and deletion practices;*
- (b) *Obtain a consumer's consent for collection, use, or disclosure of the consumer's genetic data including, at a minimum:*
  1. *Initial express consent that clearly describes the uses of the genetic data collected through the genetic testing product or service, and specifies who has access to test results and how the genetic data may be shared;*
  2. *Separate express consent for transferring or disclosing the consumer's genetic data to any person other than the company's vendors and service providers, or for using genetic data beyond the primary purpose of the genetic testing product or service and inherent contextual uses;*
  3. *Separate express consent for the retention of any biological sample provided by the consumer following completion of the initial testing service requested by the consumer;*
  4. *Informed consent in compliance with the Federal Policy for the Protection of Human Subjects, 45 C.F.R. pt. 46, for transfer or disclosure of the consumer's genetic data to third party persons for research purposes or research conducted under the control of the company for the purpose of publication or generalizable knowledge; and*
  5.
    - a. *Express consent for marketing to a consumer based on the consumer's genetic data; or for marketing by a third party person to a consumer based on the consumer having ordered or purchased a genetic testing product or service.*
    - b. *Marketing does not include the provision of customized content or offers on the Web sites or through the applications or services provided by the direct-to-consumer genetic testing company with the first-party relationship to the customer;*
- (c) *Require valid legal process for disclosing genetic data to law enforcement or any other government agency without a consumer's express written consent;*
- (d) *Develop, implement, and maintain a comprehensive security program to protect a consumer's genetic data against unauthorized access, use, or disclosure; and*
- (e) *Provide a process for a consumer to:*
  1. *Access the consumer's genetic data;*
  2. *Delete the consumer's account and genetic data; and*
  3. *Request and obtain the destruction of the consumer's biological sample.*
- (3) *Notwithstanding any other provisions in this section, a direct-to-consumer genetic testing company may not disclose a consumer's genetic data to any entity offering health insurance, life insurance, or long-term care insurance, or to any employer of the consumer without the consumer's written consent.*
- (4) *The Attorney General may bring an action in the name of the Commonwealth, or as parens patriae on behalf of consumers, to enforce this section. In any action brought by the Attorney General to enforce this section, a violation of this section is subject to a civil penalty of the following:*
  - (a) *Two thousand five hundred dollars (\$2,500) for each violation of this section;*
  - (b) *The recovery of actual damages incurred by consumers on whose behalf the action was brought; and*
  - (c) *Costs and expenses incurred by the office of the Attorney General.*
- (5) *The disclosure of genetic data pursuant to this section shall comply with all state and federal laws for the protection of privacy and security. This section shall not apply to protected health information that is collected by a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, 45 C.F.R. pts. 160 and 164, established pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5.*

➔Section 2. KRS 15.440 is amended to read as follows:

- (1) Each unit of government that meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:
- (a) Employs one (1) or more police officers;
  - (b) Pays every police officer at least the minimum federal wage;
  - (c) Requires all police officers to have, at a minimum, a high school degree, or its equivalent as determined by the council, except that each police officer employed prior to the date on which the officer's police department was included as a participant under KRS 15.410 to 15.510 shall be deemed to have met the requirements of this subsection;
  - (d)
    - 1. Requires all police officers to successfully complete a basic training course of nine hundred twenty-eight (928) hours' duration within one (1) year of the date of employment at a school certified or recognized by the council, which may provide a different number of hours of instruction as established in this paragraph, except that each police officer employed prior to the date on which the officer's police department was included as a participant under KRS 15.410 to 15.510 shall be deemed to have met the requirements of this subsection.
    - 2. As the exclusive method by which the number of hours required for basic training courses shall be modified from that which is specifically established by this paragraph, the council may, by the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, explicitly set the exact number of hours for basic training at a number different from nine hundred twenty-eight (928) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis.
    - 3. If the council sets an exact number of hours different from nine hundred twenty-eight (928) in an administrative regulation as provided by this paragraph, it shall not further change the number of hours required for basic training without promulgating administrative regulations in accordance with the provisions of KRS Chapter 13A.
    - 4. Nothing in this paragraph shall be interpreted to prevent the council, pursuant to its authority under KRS 15.330, from approving training schools with a curriculum requiring attendance of a number of hours that exceeds nine hundred twenty-eight (928) hours or the number of hours established in an administrative regulation as provided by subparagraphs 2. and 3. of this paragraph. However, the training programs and schools for the basic training of law enforcement personnel conducted by the department pursuant to KRS 15A.070 shall not contain a curriculum that requires attendance of a number of hours for basic training that is different from nine hundred twenty-eight (928) hours or the number of hours established in an administrative regulation promulgated by the council pursuant to the provisions of KRS Chapter 13A as provided by subparagraphs 2. and 3. of this paragraph.
    - 5. KRS 15.400 and 15.404(1) and subparagraphs 1. to 4. of this paragraph to the contrary notwithstanding, the council may, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, approve basic training credit for:
      - a. Years of service credit as a law enforcement officer with previous service in another state; and
      - b. Basic training completed in another state.
    - 6. KRS 15.400 and 15.404(1) and subparagraphs 1. to 4. of this paragraph to the contrary notwithstanding, the council may, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, approve basic training credit for:
      - a. Completion of eight hundred forty-eight (848) hours of training at a school established pursuant to KRS 15A.070;
      - b. A minimum of fifteen (15) years of experience as a certified law enforcement instructor at a school established pursuant to KRS 15A.070;
      - c. Completion of an average of forty (40) hours of Kentucky Law Enforcement Council approved in-service training annually from January 1, 1997, through January 1, 2020;
      - d. Three (3) years of active, full-time service as a:

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- i. City, county, urban-county, charter county, consolidated local, or unified local government police officer;
  - ii. Sheriff's deputy, excluding special deputies appointed under KRS 70.045;
  - iii. Department of Kentucky State Police officer; or
  - iv. Kentucky Department of Fish and Wildlife Resources conservation officer exercising peace officer powers under KRS 150.090; and
- e. Completion of the:
- i. Twenty-four (24) hour legal update Penal Code course;
  - ii. Sixteen (16) hour legal update constitutional procedure course; and
  - iii. Forty (40) hour basic officer skills course within one (1) year prior to applying for certification;
- (e) Requires all police officers to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of the officer's police department, of forty (40) hours' duration, at a school certified or recognized by the council which may include a four (4) hour course which meets the requirements of paragraph (j) of this subsection. This in-service training requirement shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces. This waiver shall be retroactive for peace officers from the date of September 11, 2001;
- (f) Complies with all provisions of law applicable to police officers or police departments, including transmission of data to the centralized criminal history record information system as required by KRS 17.150 and transmission of reports as required by KRS 15.391;
- (g) Complies with all rules and regulations, appropriate to the size and location of the police department issued by the cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;
- (h) Possesses a written policy and procedures manual related to domestic violence for law enforcement agencies that has been approved by the cabinet. The policy shall comply with the provisions of KRS 403.715 to 403.785. The policy shall include a purpose statement; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Health and Family Services, Department for Community Based Services; victim rights, assistance, and service responsibilities; and duties related to timely completion of records;
- (i) Possesses by January 1, ~~2017~~<sup>2023</sup>, a written policy and procedures manual related to sexual assault examinations that meets the standards provided by, and has been approved by, the cabinet, and which includes:
- 1. A requirement that evidence collected as a result of an examination performed under KRS 216B.400 be taken into custody within five (5) days of notice from the collecting facility that the evidence is available for retrieval;
  - 2. A requirement that evidence received from a collecting facility relating to an incident which occurred outside the jurisdiction of the police department be transmitted to a police department with jurisdiction within ten (10) days of its receipt by the police department;
  - 3. A requirement that all evidence retrieved from a collecting facility under this paragraph be transmitted to the Department of Kentucky State Police forensic laboratory within thirty (30) days of its receipt by the police department;
  - 4. A requirement that a suspect standard, if available, be transmitted to the Department of Kentucky State Police forensic laboratory with the evidence received from a collecting facility; ~~and~~
  - 5. A process for notifying the victim from whom the evidence was collected of the progress of the testing, whether the testing resulted in a match to other DNA samples, and if the evidence is to be destroyed. The policy may include provisions for delaying notice until a suspect is apprehended or the office of the Commonwealth's attorney consents to the notification, but shall

not automatically require the disclosure of the identity of any person to whom the evidence matched; and

**6. *A requirement that DNA samples collected as a result of an examination performed under KRS 216B.400 that are voluntarily submitted solely for elimination purposes shall not be checked against any DNA index, retained, or included in any DNA index; and***

- (j) Requires all police officers to successfully complete by December 31, 2022, and every two (2) years thereafter, a training course certified by the council of not less than four (4) hours in emergency vehicle operation.
- (2) A unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund only if the police department of the unit of government remains in compliance with the requirements of this section.
- (3) Deputies employed by a sheriff's office shall be eligible to participate in the distribution of funds from the Law Enforcement Foundation Program fund regardless of participation by the sheriff.
- (4) Failure to meet a deadline established in a policy adopted pursuant to subsection (1)(i) of this section for the retrieval or submission of evidence shall not be a basis for a dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

➔Section 3. KRS 17.175 is amended to read as follows:

- (1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted or adjudicated offenders, crime scene specimens, unidentified human remains, missing persons, and close biological relatives of missing persons shall be established in the Department of Kentucky State Police under the direction, control, and supervision of the Department of Kentucky State Police forensic laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.
- (2) The purpose of the centralized DNA database is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the Commonwealth in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes and the identification and location of missing and unidentified persons.
- (3)
  - (a) The Department of Kentucky State Police forensic laboratory shall receive, analyze, and classify DNA samples received from the Department of Corrections, the Department of Juvenile Justice, and other sources, and shall file the DNA results in the centralized databases for law enforcement identification and statistical purposes. The department shall analyze and classify all sexual assault evidence collection kits it receives. In cases where a suspect has been identified, the department may give priority to analysis and classification of sexual assault evidence collection kits where the reference standard for comparison is provided with the kit. Except as provided in paragraph (e) of this subsection, by July 1, 2018, the average completion rate for this analysis and classification shall not exceed ninety (90) days, and by July 1, 2020, the average completion rate for this analysis and classification shall not exceed sixty (60) days.
  - (b) Failure to meet the completion time goals established in paragraph (a) of this subsection shall not be a basis for a dismissal of a criminal action or a bar to the admissibility of evidence.
  - (c) The Department of Kentucky State Police shall, by August 1 of each year, report to the Legislative Research Commission the yearly average completion rate for the immediately preceding five (5) fiscal years.
  - (d) With approval by the secretary of the Justice and Public Safety Cabinet in situations in which an equipment casualty necessitates the expedited acquisition or repair of laboratory equipment required for the analysis of evidence, the acquisition or repair shall be exempt from the Finance and Administration Cabinet's competitive bidding process for both acquisition and repair purposes. Each time the authority granted by this paragraph is used, the equipment acquisition or repair shall be fully documented within thirty (30) days by the agency head in a written or electronic letter to the secretary of the Finance and Administration Cabinet, attached to an ordering or payment document in the state's procurement system, which shall include:
    - 1. An explanation of the equipment acquired or repaired;

2. The name of the vendor selected;
  3. The amount of procurement;
  4. Other price quotations obtained; and
  5. The basis for selection of the vendor.
- (e) To the extent appropriated funds are insufficient to meet the average completion time goals established in paragraph (a) of this subsection, the Department of Kentucky State Police forensic laboratory shall no longer be required to meet the average completion time goals.
- (4) DNA identification records produced from the samples are not public records but shall be confidential and used only for law enforcement purposes. DNA identification records shall be exempt from the provisions of KRS 61.870 to 61.884.
- (5) *DNA identification records produced from evidence collected as a result of an examination performed under KRS 216B.400 that are voluntarily submitted solely for elimination purposes shall not be checked against or included in the centralized database created pursuant to this section or any other database.*
- (6) A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the conviction or adjudication on which the authority for including the DNA profile was based has been reversed and the case dismissed, or that the person successfully completed the pretrial diversion program under KRS 533.258 and the charges were dismissed-diverted. The Department of Kentucky State Police shall expunge all identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of:
- (a) A written request for expungement pursuant to this section; and
  - (b) Either:
    1. A certified copy of the court order reversing and dismissing the conviction or adjudication; or
    2. A certified copy of the court order deeming the charges dismissed-diverted.
- (7)~~(6)~~ The cabinet shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for collection of DNA samples and the database system usage and integrity.
- (8)~~(7)~~ The Department of Kentucky State Police shall destroy all DNA samples that are not entered into the DNA database identification system.
- (9)~~(8)~~ Any person who disseminates, receives, or otherwise uses or attempts to use information in the DNA database identification system, knowing that such dissemination, receipt, or use is for a purpose other than authorized by this section, shall be guilty of a Class D felony.

➔Section 4. Section 1 of this Act may be cited as the Genetic Information Privacy Act.

**Signed by Governor April 8, 2022.**