

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) "Introduction" means subcutaneous injection, inhalation, ingestion, or*
12 *placement on or within the human body by other means;*

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

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

17 *2. Date of birth;*

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

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

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

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

25 *7. Religion;*

26 *8. Ethnicity or nationality;*

27 *9. Photograph;*

1 10. Fingerprint or other biometric identifier;

2 11. Social Security number; or

3 12. Any other unique personal identifier;

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

12 (e) "Subcutaneous" means existing, performed, or introduced under the skin.

13 (2) No person shall:

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

16 (b) Introduce an identification device without the consent of the person to
17 whom the identification device is introduced.

18 (3) A person to whom an identification device is introduced in violation of subsection
19 (2) of this section may bring a civil action for actual damages, compensatory
20 damages, punitive damages, injunctive relief, any combination of those, or any
21 other appropriate relief. The court may also grant a prevailing plaintiff
22 reasonable attorney's fees and litigation costs, including but not limited to expert
23 witness fees and expenses as part of the costs.

24 (4) In addition to the damages and relief authorized in subsection (3) of this section,
25 punitive damages may also be awarded upon proof of the defendant's malice,
26 oppression, fraud, or duress in requiring, coercing, or compelling the plaintiff to
27 undergo the introduction of an identification device.

1 (5) An action brought under this section shall be commenced within five (5) years of
2 the date upon which the identification device was introduced, or within five (5)
3 years of the date the introduction was discovered by the person.

4 (6) For purposes of introduction only, any interested person may file a petition for an
5 order or judgment declaring an incompetent person or minor free from the
6 control of a parent or guardian who is requiring or preventing introduction of an
7 identification device. The court shall consider that petition in light of applicable
8 law with respect to the best interests of the incompetent person or minor.

9 (7) Any restitution paid by the defendant to the victim shall be credited against any
10 judgment, award, or settlement obtained under this section.

11 (8) This section shall be liberally construed so as to protect privacy and bodily
12 integrity.

13 (9) Actions brought under this section are independent of any other actions,
14 remedies, or procedures that may be available to an aggrieved party under any
15 other law.

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

19 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 454 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) As used in this section, unless context requires otherwise:

22 (a) "Facial recognition technology" means computerized technology that helps
23 in discerning and identifying human faces using biometrics to map facial
24 features from a photo or video and comparing this information with a large
25 database of recorded faces;

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

- 1 2. Biometric identifiers do not include:
- 2 a. Writing samples, written signatures, photographs, human
- 3 biological samples used for valid scientific testing or screening,
- 4 demographic data, tattoo descriptions, or physical descriptions
- 5 such as height, weight, hair color, or eye color;
- 6 b. Donated organs, tissues, or blood or serum stored on behalf of
- 7 recipients or potential recipients of living or cadaveric
- 8 transplants and obtained or stored by a federally designated
- 9 organ procurement agency;
- 10 c. Information captured from a patient in a health care setting or
- 11 information collected, used, or stored for health care treatment,
- 12 payment, or operations under the federal Health Insurance
- 13 Portability and Accountability Act of 1996; and
- 14 d. Any X-ray, roentgen process, computed tomography, MRI, PET
- 15 scan, mammography, or other image or film of the human
- 16 anatomy used to diagnose or treat an illness or other medical
- 17 condition or to further validate scientific testing or screening;
- 18 and

19 (c) "Biometric information" means any information, regardless of how it is

20 captured, converted, stored, or shared, based on an individual's biometric

21 identifier used to identify an individual. Biometric information does not

22 include information derived from items or procedures excluded under the

23 definition of biometric identifiers.

24 (2) It is unlawful, absent a court-approved warrant, for any state or local government

25 agency, or an official thereof, to obtain, retain, request, access, or use:

26 (a) Facial recognition technology; or

27 (b) Information obtained from or by use of facial recognition.

- 1 (3) Once a person is accepted by law enforcement as being a missing person or child,
2 facial recognition technology may be used if there is video or a real time feed
3 available, provided a proven family member or court-approved guardian gives
4 written consent for the use of facial recognition technology.
- 5 (4) Photographs taken by the Transportation Cabinet, or by any other agency, in
6 order to issue operators' licenses or personal identification cards shall not be sold
7 to any entity and shall not be provided to any state or local government agency
8 for the purpose of using facial recognition technology without a warrant.
- 9 (5) A private entity in possession of biometric identifiers or biometric information
10 shall develop a written policy, made available to the public, establishing a
11 retention schedule and guidelines for permanently destroying biometric
12 identifiers and biometric information when the initial purpose for collecting or
13 obtaining such identifiers or information has been satisfied or within three (3)
14 years of the individual's last interaction with the private entity, whichever occurs
15 first. Absent a valid warrant or subpoena issued by a court of competent
16 jurisdiction, a private entity in possession of biometric identifiers or biometric
17 information shall comply with its established retention schedule and destruction
18 guidelines.
- 19 (6) No private entity may collect, capture, purchase, receive through trade, or
20 otherwise obtain a person's or a customer's biometric identifier or biometric
21 information, unless it first:
- 22 (a) Informs the subject or the subject's legally authorized representative in
23 writing that a biometric identifier or biometric information is being
24 collected or stored;
- 25 (b) Informs the subject or the subject's legally authorized representative in
26 writing of the specific purpose and length of term for which a biometric
27 identifier or biometric information is being collected, stored, and used; and

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

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

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

9 (a) Against an entity that negligently violates a provision of Section 2 of this
 10 Act, liquidated damages of one thousand dollars (\$1,000) or actual
 11 damages, whichever is greater;

12 (b) Against an entity that intentionally or recklessly violates a provision of
 13 Section 2 of this Act, liquidated damages of five thousand dollars (\$5,000)
 14 or actual damages, whichever is greater;

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

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

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

21 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 6 IS CREATED TO
 22 READ AS FOLLOWS:

23 No information obtained from or by use of facial recognition may be received in
 24 evidence in any legislative committee, task force, or other legislative body.

25 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 13B IS CREATED TO
 26 READ AS FOLLOWS:

27 No information obtained from or by use of facial recognition may be received in

1 *evidence in an administrative hearing.*

2 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO
3 READ AS FOLLOWS:

4 *No information obtained from or by use of facial recognition may be received in*
5 *evidence in any trial, hearing, or other proceeding.*

6 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 24A IS CREATED TO
7 READ AS FOLLOWS:

8 *No information obtained from or by use of facial recognition may be received in*
9 *evidence in any trial, hearing, or other proceeding.*

10 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 29A IS CREATED TO
11 READ AS FOLLOWS:

12 *No information obtained from or by use of facial recognition may be received in*
13 *evidence before a grand jury.*

14 ➔SECTION 9. A NEW SECTION OF THE KENTUCKY RULES OF
15 EVIDENCE IS CREATED TO READ AS FOLLOWS:

16 *Evidence obtained by use of facial recognition is not admissible.*