

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 944

Finance

(Senator Young)

Health and Government Operations and
Judiciary

Public Health - Subcutaneous Implanting of Identification Device - Prohibition

This bill prohibits a person or an agent, representative, or designee of the State or a local government from requiring, coercing, or compelling an individual to undergo the subcutaneous implanting of an “identification device.” The bill authorizes a person who is implanted with a subcutaneous “identification device” to file a civil action and establishes civil penalties for violators. A plaintiff is also eligible for punitive damages under specified circumstances. Such an action must generally be brought within three years of the implantation. The bill must be liberally construed in the protection of privacy and bodily integrity.

Fiscal Summary

State Effect: The bill is not expected to affect State operations or finances.

Local Effect: Any potential increase in the workload of the circuit courts can be handled with existing resources. To the extent civil penalties are assessed, revenues increase minimally.

Small Business Effect: None.

Analysis

Bill Summary: An “identification device” means an item, an application, or a product that is passively or actively capable of transmitting specified personal information, including devices using radio frequency technology. “Identification device” does *not* include an item, an application, or a product that is used in the diagnosis, monitoring, treatment, or

prevention of a health condition. “Require, coerce, or compel” includes the use of physical violence, threat, intimidation, retaliation, the conditioning of any private or public benefit (including employment, promotion, or other employment benefit), and any other means to cause a reasonable individual of ordinary susceptibilities to acquiesce when the individual otherwise would not.

An individual who is implanted with a subcutaneous identification device in violation of the bill’s prohibition may file a civil action in the circuit court in the county where the violation occurred. Violators are subject to a civil penalty of up to \$10,000, and an additional civil penalty of up to \$1,000 for each day after the device was implanted that the violation continues until corrected. Additionally, the court may award the plaintiff compensatory damages, injunctive relief, reasonable attorney’s fees and litigation expenses, or any other appropriate relief. The court may also award the plaintiff punitive damages on a finding of proof of specified malice, oppression, fraud, or duress. The remedies established under the bill are in addition to any statutory, legal, or equitable remedies that may be available, and they are not intended to be prerequisite to or exclusive of any other remedies.

Generally, an action must be filed within three years of implantation of an identification device unless a defendant induces the plaintiff to delay the filing of the action, or the plaintiff delays filing due to specified threats made by the defendant.

Current Law: None applicable.

Background: Radio frequency identification (RFID) is a generic term for the technologies most commonly found in small electronic devices consisting of a microchip and an antenna. In October 2004, the U.S. Food and Drug Administration approved an RFID for use in humans. Although RFID chips are generally used in payment and security systems and inventory tracking, they have also been used in humans and pets via chips that can be implanted under the skin.

Fisher Phillips, a law firm specializing in employment law, reported on its [employment privacy blog](#) in August 21, 2017, that a Wisconsin technology company, 3 Square Market, may have been the first U.S. company to offer employees the ability to have an RFID chip implanted under their skin. The National Conference of State Legislatures (NCSL) reports that the use of RFID has raised privacy concerns in some states, particularly with regard to linking personal information with RFID tags. According to NCSL, as of January 1, 2018, California, Missouri, North Dakota, Oklahoma, and Wisconsin all prohibit the mandatory implantation of a chip. There are no known instances of employers in Maryland requiring their employees to use RFID chips.

The chips can also be used for medical purposes, as once implanted, a medical professional can retrieve a patient identifier to access the patient’s medical information from a website.

Additional Information

Prior Introductions: HB 1401 of 2008, a similar bill, received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 1101 (Delegate Stein) - Health and Government Operations and Judiciary.

Information Source(s): Fisher Phillips; Maryland Association of County Health Officers; Maryland Department of Aging; Maryland Association of Counties; Maryland Municipal League; National Conference of State Legislatures; Judiciary (Administrative Office of the Courts); Maryland Department of Disabilities; Maryland Department of Health; Department of Human Services; Maryland Insurance Administration; Department of Legislative Services

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