

Chapter 453

**(Senate Bill 944)**

AN ACT concerning

**Public Health – Subcutaneous Implanting of Identification Device – Prohibition**

FOR the purpose of prohibiting a person or an agent, a representative, or a designee of the State or a local government from requiring, coercing, or compelling an individual to undergo a certain implanting of a certain identification device; authorizing an individual who is implanted with a subcutaneous identification device in violation of a certain provision of this Act to file a civil action in a certain court within a certain time period; authorizing a court to assess certain civil penalties and award certain damages, fees, expenses, and relief under certain circumstances; providing that the remedies under this Act are in addition to and not exclusive of or a prerequisite to certain other remedies; prohibiting the assertion of a certain limitation under certain circumstances; defining certain terms; providing for the construction of this Act; providing for the application of this Act; and generally relating to the subcutaneous implanting of identification devices.

BY adding to

Article – Health – General

Section 20–1901 and 20–1902 to be under the new subtitle “Subtitle 19. Subcutaneous Implanting of Identification Device”

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Health – General**

**SUBTITLE 19. SUBCUTANEOUS IMPLANTING OF IDENTIFICATION DEVICE.**

**20–1901.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) (1) “IDENTIFICATION DEVICE” MEANS AN ITEM, AN APPLICATION, OR A PRODUCT THAT IS PASSIVELY OR ACTIVELY CAPABLE OF TRANSMITTING PERSONAL INFORMATION, INCLUDING DEVICES USING RADIO FREQUENCY TECHNOLOGY.**

**(2) “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.**

**(C) “PERSONAL INFORMATION” INCLUDES THE FOLLOWING DATA ELEMENTS TO THE EXTENT THAT THE DATA ELEMENTS ARE USED ALONE OR IN CONJUNCTION WITH OTHER INFORMATION USED TO IDENTIFY AN INDIVIDUAL:**

- (1) FIRST OR LAST NAME;**
- (2) ADDRESS;**
- (3) TELEPHONE NUMBER;**
- (4) E-MAIL, INTERNET PROTOCOL, OR WEBSITE ADDRESS;**
- (5) DATE OF BIRTH;**
- (6) DRIVER’S LICENSE NUMBER OR IDENTIFICATION CARD NUMBER;**
- (7) BANK, CREDIT CARD, OR OTHER FINANCIAL ACCOUNT NUMBER;**
- (8) ANY UNIQUE PERSONAL IDENTIFIER CONTAINED OR ENCODED ON A HEALTH INSURANCE, HEALTH BENEFIT, OR BENEFIT CARD OR RECORD ISSUED IN CONJUNCTION WITH A GOVERNMENT-SUPPORTED AID PROGRAM;**
- (9) RELIGION;**
- (10) ETHNICITY OR NATIONALITY;**
- (11) PHOTOGRAPH;**
- (12) FINGERPRINT OR OTHER BIOMETRIC IDENTIFIER;**
- (13) SOCIAL SECURITY NUMBER; AND**
- (14) ANY OTHER UNIQUE PERSONAL IDENTIFIER.**

**(D) “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.**

(E) "SUBCUTANEOUS" MEANS EXISTING, PERFORMED, OR INTRODUCED UNDER OR ON THE SKIN.

20-1902.

(A) ~~EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, A~~ A PERSON OR AN AGENT, A REPRESENTATIVE, OR A DESIGNEE OF THE STATE OR A LOCAL GOVERNMENT MAY NOT REQUIRE, COERCE, OR COMPEL AN INDIVIDUAL TO UNDERGO THE SUBCUTANEOUS IMPLANTING OF AN IDENTIFICATION DEVICE.

(B) (1) AN INDIVIDUAL WHO IS IMPLANTED WITH A SUBCUTANEOUS IDENTIFICATION DEVICE IN VIOLATION OF SUBSECTION (A) OF THIS SECTION MAY FILE A CIVIL ACTION IN THE CIRCUIT COURT IN THE COUNTY WHERE THE VIOLATION OCCURRED.

(2) IF THE COURT FINDS THAT THE PERSON OR AGENT, REPRESENTATIVE, OR DESIGNEE OF THE STATE OR A LOCAL GOVERNMENT VIOLATED SUBSECTION (A) OF THIS SECTION, THE COURT MAY:

(I) ASSESS AGAINST THE DEFENDANT:

1. A CIVIL PENALTY NOT EXCEEDING \$10,000; AND
2. AN ADDITIONAL CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH DAY AFTER THE DAY OF IMPLANTATION THAT THE VIOLATION CONTINUES UNTIL CORRECTED; AND

(II) AWARD THE PLAINTIFF:

1. COMPENSATORY DAMAGES;
2. INJUNCTIVE RELIEF;
3. REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, INCLUDING EXPERT WITNESS FEES AND EXPENSES; OR
4. ANY OTHER APPROPRIATE RELIEF.

(3) IN ADDITION TO THE DAMAGES OR RELIEF AWARDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE COURT MAY AWARD THE PLAINTIFF PUNITIVE DAMAGES ON A FINDING OF PROOF OF THE DEFENDANT'S MALICE, OPPRESSION, FRAUD, OR DURESS INFLICTED IN REQUIRING, COERCING, OR

**COMPELLING THE PLAINTIFF TO UNDERGO THE SUBCUTANEOUS IMPLANTING OF AN IDENTIFICATION DEVICE.**

**(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN ACTION BROUGHT UNDER SUBSECTION (B) OF THIS SECTION SHALL BE FILED WITHIN 3 YEARS AFTER THE DATE ON WHICH THE IDENTIFICATION DEVICE WAS IMPLANTED.**

**(2) IF A DEFENDANT INDUCES THE PLAINTIFF TO DELAY THE FILING OF THE ACTION OR THE PLAINTIFF DELAYS THE FILING DUE TO THREATS MADE BY THE DEFENDANT THAT CAUSED THE PLAINTIFF DURESS, THE DEFENDANT MAY NOT ASSERT THE LIMITATION SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

**(D) THE REMEDIES PROVIDED BY THIS SECTION ARE IN ADDITION TO ANY OTHER STATUTORY, LEGAL, OR EQUITABLE REMEDIES THAT MAY BE AVAILABLE AND ARE NOT INTENDED TO BE PREREQUISITE TO OR EXCLUSIVE OF ANY OTHER REMEDIES.**

**(E) ~~EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, THE~~ THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED IN THE PROTECTION OF PRIVACY AND BODILY INTEGRITY.**

**~~(F) THIS SECTION MAY NOT BE CONSTRUED TO MODIFY THE LAWS GOVERNING THE RIGHTS OF:~~**

**~~(1) PARENTS OR GUARDIANS;~~**

**~~(2) CHILDREN OR MINORS; OR~~**

**~~(3) DEPENDENT ADULTS.~~**

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

**Approved by the Governor, May 8, 2018.**