

# HOUSE BILL 1101

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CF SB 944

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By: **Delegate Stein**

Introduced and read first time: February 7, 2018

Assigned to: Health and Government Operations and Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

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

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

15 BY adding to

16 Article – Health – General

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

19 Annotated Code of Maryland

20 (2015 Replacement Volume and 2017 Supplement)

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

23 **Article – Health – General**

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

25 **20–1901.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9                   **(1) FIRST OR LAST NAME;**

10                   **(2) ADDRESS;**

11                   **(3) TELEPHONE NUMBER;**

12                   **(4) E-MAIL, INTERNET PROTOCOL, OR WEBSITE ADDRESS;**

13                   **(5) DATE OF BIRTH;**

14                   **(6) DRIVER’S LICENSE NUMBER OR IDENTIFICATION CARD NUMBER;**

15                   **(7) BANK, CREDIT CARD, OR OTHER FINANCIAL ACCOUNT NUMBER;**

16                   **(8) ANY UNIQUE PERSONAL IDENTIFIER CONTAINED OR ENCODED ON**  
17 **A HEALTH INSURANCE, HEALTH BENEFIT, OR BENEFIT CARD OR RECORD ISSUED IN**  
18 **CONJUNCTION WITH A GOVERNMENT-SUPPORTED AID PROGRAM;**

19                   **(9) RELIGION;**

20                   **(10) ETHNICITY OR NATIONALITY;**

21                   **(11) PHOTOGRAPH;**

22                   **(12) FINGERPRINT OR OTHER BIOMETRIC IDENTIFIER;**

23                   **(13) SOCIAL SECURITY NUMBER; AND**

24                   **(14) ANY OTHER UNIQUE PERSONAL IDENTIFIER.**

25           **(D) “REQUIRE, COERCE, OR COMPEL” INCLUDES THE USE OF PHYSICAL**

1 VIOLENCE, THREAT, INTIMIDATION, RETALIATION, THE CONDITIONING OF ANY  
2 PRIVATE OR PUBLIC BENEFIT, INCLUDING EMPLOYMENT, PROMOTION, OR OTHER  
3 EMPLOYMENT BENEFIT, AND ANY OTHER MEANS TO CAUSE A REASONABLE  
4 INDIVIDUAL OF ORDINARY SUSCEPTIBILITIES TO ACQUIESCE WHEN THE  
5 INDIVIDUAL OTHERWISE WOULD NOT.

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

8 20-1902.

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

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

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

20 (I) ASSESS AGAINST THE DEFENDANT:

21 1. A CIVIL PENALTY NOT EXCEEDING \$10,000; AND

22 2. AN ADDITIONAL CIVIL PENALTY NOT EXCEEDING  
23 \$1,000 FOR EACH DAY AFTER THE DAY OF IMPLANTATION THAT THE VIOLATION  
24 CONTINUES UNTIL CORRECTED; AND

25 (II) AWARD THE PLAINTIFF:

26 1. COMPENSATORY DAMAGES;

27 2. INJUNCTIVE RELIEF;

28 3. REASONABLE ATTORNEY'S FEES AND LITIGATION  
29 EXPENSES, INCLUDING EXPERT WITNESS FEES AND EXPENSES; OR

30 4. ANY OTHER APPROPRIATE RELIEF.

1           **(3) IN ADDITION TO THE DAMAGES OR RELIEF AWARDED UNDER**  
2 **PARAGRAPH (2) OF THIS SUBSECTION, THE COURT MAY AWARD THE PLAINTIFF**  
3 **PUNITIVE DAMAGES ON A FINDING OF PROOF OF THE DEFENDANT'S MALICE,**  
4 **OPPRESSION, FRAUD, OR DURESS INFLICTED IN REQUIRING, COERCING, OR**  
5 **COMPELLING THE PLAINTIFF TO UNDERGO THE SUBCUTANEOUS IMPLANTING OF AN**  
6 **IDENTIFICATION DEVICE.**

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

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

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

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

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

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

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

26           **(3) DEPENDENT ADULTS.**

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

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