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2009-2010 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. PHEFFER, GREENE, JOHN, COOK, REILLY, GALEF, JAFFEE -- Multi-Sponsored by -- M. of A. BOYLAND, GLICK, GORDON, WEISENBERG -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to subcutaneous implanting of an identification device

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The civil rights law is amended by adding a new section  
2     50-f to read as follows:  
3     S 50-F. SUBCUTANEOUS IMPLANTING OF AN IDENTIFICATION DEVICE. 1.  
4     EXCEPT AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, A PERSON SHALL  
5     NOT REQUIRE, COERCE, OR COMPEL ANY OTHER INDIVIDUAL TO UNDERGO THE  
6     SUBCUTANEOUS IMPLANTING OF AN IDENTIFICATION DEVICE.  
7     2. A. ANY PERSON WHO VIOLATES SUBDIVISION ONE OF THIS SECTION MAY BE  
8     ASSESSED AN INITIAL CIVIL PENALTY OF NO MORE THAN TEN THOUSAND DOLLARS,  
9     AND NO MORE THAN ONE THOUSAND DOLLARS FOR EACH DAY THE VIOLATION CONTIN-  
10    UES UNTIL THE DEFICIENCY IS CORRECTED. THAT CIVIL PENALTY MAY BE  
11    ASSESSED AND RECOVERED IN A CIVIL ACTION BROUGHT IN ANY COURT OF COMPE-  
12    TENT JURISDICTION. THE COURT MAY ALSO GRANT A PREVAILING PLAINTIFF  
13    REASONABLE ATTORNEY'S FEES AND LITIGATION COSTS, INCLUDING, BUT NOT  
14    LIMITED TO, EXPERT WITNESS FEES AND EXPENSES AS PART OF THE COSTS.  
15    B. A PERSON WHO IS IMPLANTED WITH A SUBCUTANEOUS IDENTIFICATION DEVICE  
16    IN VIOLATION OF SUBDIVISION ONE OF THIS SECTION MAY BRING A CIVIL ACTION  
17    FOR ACTUAL DAMAGES, COMPENSATORY DAMAGES, PUNITIVE DAMAGES, INJUNCTIVE  
18    RELIEF, ANY COMBINATION OF THOSE, OR ANY OTHER APPROPRIATE RELIEF.  
19    C. ADDITIONALLY, PUNITIVE DAMAGES MAY ALSO BE AWARDED UPON PROOF OF  
20    THE DEFENDANT'S MALICE, OPPRESSION, FRAUD, OR DURESS IN REQUIRING,  
21    COERCING, OR COMPELLING THE PLAINTIFF TO UNDERGO THE SUBCUTANEOUS  
22    IMPLANTING OF AN IDENTIFICATION DEVICE.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 3. A. AN ACTION BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED  
2 WITHIN THREE YEARS OF THE DATE UPON WHICH THE IDENTIFICATION DEVICE WAS  
3 IMPLANTED.

4 B. IF THE VICTIM WAS A DEPENDENT ADULT OR MINOR WHEN THE IMPLANTATION  
5 OCCURRED, ACTIONS BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED  
6 WITHIN THREE YEARS AFTER THE DATE THE PLAINTIFF, OR HIS OR HER GUARDIAN  
7 OR PARENT, DISCOVERED OR REASONABLY SHOULD HAVE DISCOVERED THE IMPLANT,  
8 OR WITHIN EIGHT YEARS AFTER THE PLAINTIFF ATTAINS THE AGE OF MAJORITY,  
9 WHICHEVER DATE OCCURS LATER.

10 C. THE STATUTE OF LIMITATIONS SHALL NOT RUN AGAINST A DEPENDENT ADULT  
11 OR MINOR PLAINTIFF SIMPLY BECAUSE A GUARDIAN AD LITEM HAS BEEN  
12 APPOINTED. A GUARDIAN AD LITEM'S FAILURE TO BRING A PLAINTIFF'S ACTION  
13 WITHIN THE APPLICABLE LIMITATION PERIOD WILL NOT PREJUDICE THE  
14 PLAINTIFF'S RIGHT TO DO SO.

15 D. A DEFENDANT IS ESTOPPED TO ASSERT A DEFENSE OF THE STATUTE OF LIM-  
16 TATIONS WHEN THE EXPIRATION OF THE STATUTE IS DUE TO CONDUCT BY THE  
17 DEFENDANT INDUCING THE PLAINTIFF TO DELAY THE FILING OF THE ACTION, OR  
18 DUE TO THREATS MADE BY THE DEFENDANT CAUSING DURESS UPON THE PLAINTIFF.

19 4. ANY RESTITUTION PAID BY THE DEFENDANT TO THE VICTIM SHALL BE CRED-  
20 ITED AGAINST ANY JUDGMENT, AWARD, OR SETTLEMENT OBTAINED PURSUANT TO  
21 THIS SECTION.

22 5. THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED SO AS  
23 TO PROTECT PRIVACY AND BODILY INTEGRITY.

24 6. ACTIONS BROUGHT PURSUANT TO THIS SECTION ARE INDEPENDENT OF ANY  
25 OTHER ACTIONS, REMEDIES, OR PROCEDURES THAT MAY BE AVAILABLE TO AN  
26 AGGRIEVED PARTY PURSUANT TO ANY OTHER LAW.

27 7. THIS SECTION SHALL NOT IN ANY WAY MODIFY EXISTING STATUTORY OR CASE  
28 LAW REGARDING THE RIGHTS OF PARENTS OR GUARDIANS, THE RIGHTS OF CHILDREN  
29 OR MINORS, OR THE RIGHTS OF DEPENDENT ADULTS.

30 8. FOR PURPOSES OF THIS SECTION:

31 A. "IDENTIFICATION DEVICE" MEANS ANY ITEM, APPLICATION, OR PRODUCT  
32 THAT IS PASSIVELY OR ACTIVELY CAPABLE OF TRANSMITTING PERSONAL INFORMA-  
33 TION, INCLUDING, BUT NOT LIMITED TO, DEVICES USING RADIO FREQUENCY TECH-  
34 NOLOGY.

35 B. "PERSON" MEANS AN INDIVIDUAL, BUSINESS ASSOCIATION, PARTNERSHIP,  
36 LIMITED PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, TRUST,  
37 ESTATE, COOPERATIVE ASSOCIATION, OR OTHER ENTITY.

38 C. "PERSONAL INFORMATION" INCLUDES ANY OF THE FOLLOWING DATA ELEMENTS  
39 TO THE EXTENT THEY ARE USED ALONE OR IN CONJUNCTION WITH ANY OTHER  
40 INFORMATION USED TO IDENTIFY AN INDIVIDUAL:

41 (I) FIRST OR LAST NAME.

42 (II) ADDRESS.

43 (III) TELEPHONE NUMBER.

44 (IV) E-MAIL, INTERNET PROTOCOL, OR WEB SITE ADDRESS.

45 (V) DATE OF BIRTH.

46 (VI) DRIVER'S LICENSE NUMBER OR NEW YORK NON-DRIVER IDENTIFICATION  
47 CARD NUMBER.

48 (VII) ANY UNIQUE PERSONAL IDENTIFIER NUMBER CONTAINED OR ENCODED ON A  
49 DRIVER'S LICENSE OR IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF  
50 MOTOR VEHICLES.

51 (VIII) BANK, CREDIT CARD, OR OTHER FINANCIAL INSTITUTION ACCOUNT  
52 NUMBER.

53 (IX) ANY UNIQUE PERSONAL IDENTIFIER CONTAINED OR ENCODED ON A HEALTH  
54 INSURANCE, HEALTH BENEFIT, OR BENEFIT CARD OR RECORD ISSUED IN CONJUNC-  
55 TION WITH ANY GOVERNMENT-SUPPORTED AID PROGRAM.

56 (X) RELIGION.

1 (XI) ETHNICITY OR NATIONALITY.

2 (XII) PHOTOGRAPH.

3 (XIII) FINGERPRINT OR OTHER BIOMETRIC IDENTIFIER.

4 (XIV) SOCIAL SECURITY NUMBER.

5 (XV) ANY UNIQUE PERSONAL IDENTIFIER.

6 D. "REQUIRE, COERCE, OR COMPEL" INCLUDES PHYSICAL VIOLENCE, THREAT,  
7 INTIMIDATION, RETALIATION, THE CONDITIONING OF ANY PRIVATE OR PUBLIC  
8 BENEFIT OR CARE ON CONSENT TO IMPLANTATION, INCLUDING EMPLOYMENT,  
9 PROMOTION, OR OTHER EMPLOYMENT BENEFIT, OR BY ANY MEANS THAT CAUSES A  
10 REASONABLE PERSON OF ORDINARY SUSCEPTIBILITIES TO ACQUIESCE TO IMPLANTA-  
11 TION WHEN HE OR SHE OTHERWISE WOULD NOT.

12 E. "SUBCUTANEOUS" MEANS EXISTING, PERFORMED, OR INTRODUCED UNDER OR ON  
13 THE SKIN.

14 S 2. This act shall take effect on the ninetieth day after it shall  
15 have become a law.