S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PHEFFER, COOK, REILLY, GALEF, JAFFEE, CASTRO, MAYERSOHN, HOOPER -- Multi-Sponsored by -- M. of A. BOYLAND, GLICK, 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:

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. SUBCUTANEOUS IMPLANTING OF AN IDENTIFICATION DEVICE. 1. EXCEPT AS PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION, A PERSON SHALL NOT REQUIRE, COERCE, OR COMPEL ANY OTHER INDIVIDUAL TO UNDERGO THE SUBCUTANEOUS IMPLANTING OF AN IDENTIFICATION DEVICE.

2. A. ANY PERSON WHO VIOLATES SUBDIVISION ONE OF THIS SECTION MAY BE ASSESSED AN INITIAL CIVIL PENALTY OF NO MORE THAN TEN THOUSAND DOLLARS, AND NO MORE THAN ONE THOUSAND DOLLARS FOR EACH DAY THE VIOLATION CONTINUES UNTIL THE DEFICIENCY IS CORRECTED. THAT CIVIL PENALTY MAY BE ASSESSED AND RECOVERED IN A CIVIL ACTION BROUGHT IN ANY COURT OF COMPETENT JURISDICTION. THE COURT MAY ALSO GRANT A PREVAILING PLAINTIFF REASONABLE ATTORNEY'S FEES AND LITIGATION COSTS, INCLUDING, BUT NOT LIMITED TO, EXPERT WITNESS FEES AND EXPENSES AS PART OF THE COSTS.

B. A PERSON WHO IS IMPLANTED WITH A SUBCUTANEOUS IDENTIFICATION DEVICE IN VIOLATION OF SUBDIVISION ONE OF THIS SECTION MAY BRING A CIVIL ACTION FOR ACTUAL DAMAGES, COMPENSATORY DAMAGES, PUNITIVE DAMAGES, INJUNCTIVE RELIEF, ANY COMBINATION OF THOSE, OR ANY OTHER APPROPRIATE RELIEF.

C. ADDITIONALLY, PUNITIVE DAMAGES MAY ALSO BE AWARDED UPON PROOF OF THE DEFENDANT'S MALICE, OPPRESSION, FRAUD, OR DURESS IN REQUIRING, COERCING, OR COMPELLING THE PLAINTIFF TO UNDERGO THE SUBCUTANEOUS 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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3. A. AN ACTION BROUGHT PURSUANT TO THIS SECTION SHALL BE COMMENCED WITHIN THREE YEARS OF THE DATE UPON WHICH THE IDENTIFICATION DEVICE WAS IMPLANTED.

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

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

D. A DEFENDANT IS ESTOPPED TO ASSERT A DEFENSE OF THE STATUTE OF LIMITATIONS WHEN THE EXPIRATION OF THE STATUTE IS DUE TO CONDUCT BY THE DEFENDANT INDUCING THE PLAINTIFF TO DELAY THE FILING OF THE ACTION, OR DUE TO THREATS MADE BY THE DEFENDANT CAUSING DURESS UPON THE PLAINTIFF.

4. ANY RESTITUTION PAID BY THE DEFENDANT TO THE VICTIM SHALL BE CREDITED AGAINST ANY JUDGMENT, AWARD, OR SETTLEMENT OBTAINED PURSUANT TO THIS SECTION.

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

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

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

8. FOR PURPOSES OF THIS SECTION:

A. "IDENTIFICATION DEVICE" MEANS ANY ITEM, APPLICATION, OR PRODUCT THAT IS PASSIVELY OR ACTIVELY CAPABLE OF TRANSMITTING PERSONAL INFORMATION, INCLUDING, BUT NOT LIMITED TO, DEVICES USING RADIO FREQUENCY TECHNOLOGY.

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

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

(I) FIRST OR LAST NAME.

(II) ADDRESS.

(III) TELEPHONE NUMBER.

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

(V) DATE OF BIRTH.

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

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

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

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

(X) RELIGION.

(XI) ETHNICITY OR NATIONALITY.
(XII) PHOTOGRAPH.
(XIII) FINGERPRINT OR OTHER BIOMETRIC IDENTIFIER.
(XIV) SOCIAL SECURITY NUMBER.
(XV) ANY UNIQUE PERSONAL IDENTIFIER.

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

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

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