

SECOND REGULAR SESSION

# HOUSE BILL NO. 2242

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COOPER (155), GUEST, JONES (117), DEEKEN, WALLACE,  
BIVINS, KINGERY, HARRIS (110), RUESTMAN, SATER, FUNDERBURK,  
WHORTON AND SANDER (Co-sponsors).

Read 1st time February 21, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4569L.01I

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### AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to actions for damages for coerced subcutaneous implantation of an identification device.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be  
2 known as section 537.043, to read as follows:

**537.043. 1. As used in this section, the following terms shall mean:**

2       **(1) "Identification device", any item, application, or product that is passively or**  
3 **actively capable of transmitting personal information, including but not limited to, devices**  
4 **using radio frequency technology or any electronic device used to track, harass, or**  
5 **download information without permission;**

6       **(2) "Person", an individual, business association, partnership, limited partnership,**  
7 **corporation, limited liability company, trust, estate, cooperative association, or other**  
8 **entity;**

9       **(3) "Personal information", includes any of the following data elements to the**  
10 **extent they are used alone or in conjunction with any other information used to identify**  
11 **an individual:**

12       **(a) E-mail, internet protocol, or web site address;**

13       **(b) Date of birth;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 14           (c) Driver's license number or Missouri identification card number;  
15           (d) Any unique personal identifier number contained or encoded on a driver's  
16 license or identification card issued;  
17           (e) Bank, credit card, or other financial institution account number;  
18           (f) Any unique personal identifier contained or encoded on a health insurance,  
19 health benefit, or benefit card or record issued in conjunction with any government-  
20 supported aid program;  
21           (g) Religion;  
22           (h) Ethnicity or nationality;  
23           (i) Photograph;  
24           (j) Fingerprint or other biometric identifier;  
25           (k) Social Security number;  
26           (l) Any other unique personal identifier;  
27           (4) "Require, coerce, or compel", includes physical violence, threat, intimidation,  
28 retaliation, the conditioning of any private or public benefit or care on consent to  
29 implantation, including employment, promotion, or other employment benefit, or by any  
30 means that causes a reasonable person of ordinary susceptibilities to acquiesce to  
31 implantation when he or she otherwise would not, but does not include legitimate medical  
32 uses for which the patient or his or her guardian or parent has consented;  
33           (5) "Subcutaneous", existing, performed, or introduced under or on the skin.  
34           2. A person shall not require, coerce, or compel any other individual to undergo the  
35 subcutaneous implanting of an identification device.  
36           3. Any person who violates the provisions of subsection 2 of this section may be  
37 assessed an initial civil penalty of no more than ten thousand dollars and no more than one  
38 thousand dollars for each day the violation continues until the deficiency is corrected. That  
39 civil penalty may be assessed and recovered in a civil action brought in any court of  
40 competent jurisdiction. The court may also grant a prevailing plaintiff reasonable  
41 attorney's fees and litigation costs, including but not limited to, expert witness fees and  
42 expenses as part of the costs.  
43           4. A person who is implanted with a subcutaneous identification device in violation  
44 of the provisions of subsection 2 of this section may bring a civil action for actual damages,  
45 compensatory damages, punitive damages, injunctive relief, any combination of those, or  
46 any other appropriate relief.  
47           5. Additionally, punitive damages may also be awarded upon proof of the  
48 defendant's malice, oppression, fraud, or duress in requiring, coercing, or compelling the  
49 plaintiff to undergo the subcutaneous implanting of an identification device.

50           **6. An action brought under this section shall be commenced within three years of**  
51 **the date upon which the identification device was implanted.**

52           **7. If the victim was an incompetent, a dependent adult, or minor when the**  
53 **implantation occurred, actions brought under this section shall be commenced within three**  
54 **years after the date the plaintiff, or his or her guardian or parent, discovered or reasonably**  
55 **should have discovered the implant, or within eight years after the plaintiff attains the age**  
56 **of majority, whichever date occurs later.**

57           **8. The statute of limitations shall not run against an incompetent, a dependent**  
58 **adult, or minor plaintiff simply because a guardian ad litem has been appointed. A**  
59 **guardian ad litem's failure to bring a plaintiff's action within the applicable limitation**  
60 **period will not prejudice the plaintiff's right to do so.**

61           **9. A defendant is estopped from asserting a defense of the statute of limitations**  
62 **when the expiration of the statute is due to conduct by the defendant inducing the plaintiff**  
63 **to delay the filing of the action, or due to threats made by the defendant causing duress**  
64 **upon the plaintiff.**

65           **10. For purposes of implantation only, any interested person may file a petition for**  
66 **an order or judgment declaring an incompetent or minor free from the control of a parent**  
67 **or guardian who is requiring or preventing implantation of an identification device. The**  
68 **court shall consider that petition in light of applicable law with respect to the best interests**  
69 **of the incompetent or minor.**

70           **11. Any restitution paid by the defendant to the victim shall be credited against any**  
71 **judgment, award, or settlement obtained under this section.**

72           **12. The provisions of this section shall be liberally construed so as to protect**  
73 **privacy and bodily integrity.**

74           **13. Actions brought under this section are independent of any other actions,**  
75 **remedies, or procedures that may be available to an aggrieved party under any other law.**

76           **14. The provisions of this section shall not in any way modify existing statutory or**  
77 **case law regarding the rights of parents or guardians, the rights of children or minors, or**  
78 **the rights of dependent adults.**

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