



**Testimony for the House Health and Government Operations Committee
April 3, 2018**

SB 944 - Public Health – Subcutaneous Implanting of Identification Device – Prohibition

SUPPORT

The Libertarian Party of Maryland (LPMD) and the American Civil Liberties Union of Maryland (ACLU) support SB 944, which prohibits any state or local government, or agent thereof, from requiring, coercing, or compelling an individual to undergo the subcutaneous implanting of an identification device. SB 944 helps ensure that the workplace provides protections to government employees against a certain type of potential employer invasion of privacy, that of a practice called “microchipping.”

New technologies are giving employers unprecedented abilities to monitor and watch their workers. In other states, we have seen a new practice known as “microchipping,” which allows employers to implant microchips under the skin of their employees for the alleged purpose of functioning as a multi-purpose key, credit card, business card sharing mechanism, and identification tool to use copy machines, log into computers.¹ However, government as an employer could have particularly egregious results, requiring proper restrictions so that these microchips cannot turn into a form of electronic surveillance that goes well beyond proper management concerns and becomes a tool for spying on employees and other individuals in furtherance of no legitimate employer interest. Electronic monitoring of employees is an area where we have seen the emergence of especially intrusive and unprecedented levels of workplace surveillance. In some cases, employers have even demanded that workers turn over the passwords to their social media accounts. These concerns become even more salient when a State or local government demands such intrusions of their employees. The State of Maryland

¹ See Eric Mack, Forbes, *Why The Company Putting 'Chip' Implants In Employees Isn't Starting A Trend*, available at <https://www.forbes.com/sites/ericmack/2017/07/25/microchips-implant-three-square-market-wisconsin-chip/#2c840ce1463a> (July 25, 2017).

should take a leadership role by preventing this practice by state and local government employees.

While microchipping and other employer technology may become standardized, we must ensure that state employees and individuals interacting with state and local governments retain the ability to choose whether they want an invasive device in their bodies. Further, since this bill specifies the restrictions under which a state or local government can utilize this technology, it is even more imperative that the government does not have the ability to invade the privacy of individuals without their consent.

While microchips have been used in the workplace setting, SB 944 specifies that a governmental entity “may not require, coerce, or compel an *individual* to undergo “microchipping.” With this language, the bill intends to prohibit forcible implanting of microchips in *any* person, including for instance, inmates, children in loco parentis, and wards of the state within Maryland. In order to clarify this intention of the bill, we recommend consideration of two bill amendments to clarify important categories of citizens who should be protected from State or local governments power to compel microchipping.

Health General Article Section 20-1901(D) in SB 944 provides a definition of “require, compel or coerce” that defines the scope of the prohibition. *See page 2, line 25 through page 3, line 5.* We recommend this language be amended to specifically include (within the prohibition) any required microchipping as a condition of criminal sentencing, parole, or bail. We also want the bill to be clear that the State and local governments cannot compel children or adults who may be in the care of the State or a local government to compel microchipping, whether it is children in loco parentis (including students), dependent adults in care facilities of the government, or other wards placed in private facilities for care.

The suggested language is underlined below:

(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, AS A CONDITION OF ANY CRIMINAL SENTENCING OR ORDER OF PAROLE OR BAIL, OR CONDITION OF BEING A CHILD OR ADULT WHO IS IN THE CARE OF THE STATE OR A LOCAL GOVERNMENT, AND ANY OTHER MEANS TO CAUSE A REASONABLE INDIVIDUAL OF ORDINARY SUSCEPTIBILITIES TO ACQUIESCE WHEN THE INDIVIDUAL OTHERWISE WOULD NOT.

Prohibiting the requirement, coercion or compulsion of microchipping by the State or local governments, including as employers, is a safeguard against this potentially dangerous intrusion into an employee’s life, privacy, personal dignity and liberty.

For these reasons, we request a favorable report on SB 944.