
Legal Updates & News

Bulletins

California Bans Mandatory Implanting of Identification Devices

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Privacy Bulletin

Effective January 1, 2008, a new California law will regulate the implantation of RFIDs and other identification devices in humans. California Senate Bill 362 ("SB 362") prohibits any person from requiring, coercing, or compelling another individual to undergo the implanting of an "identification device" on or under the skin.^[1] It specifically prohibits conditioning employment, promotion, or other employment benefits on an individual's consent to the implantation of an identification device.^[2]

Under SB 362, an "identification device" is 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.^[3] An implantation of an identification device is considered to be "subcutaneous" if the device is "existing, performed, or introduced under or on the skin."^[4] SB 362 provides that it "shall be liberally construed so as to protect privacy and bodily integrity."^[5]

SB 362 creates a private right of action for an individual who is implanted with a subcutaneous identification device in violation of this new law.^[6] Such an individual may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.^[7] Actions brought under SB 362 are independent of any other actions, remedies, or procedures that may be available to the plaintiff.^[8] In addition, a person who violates SB 362 may be assessed an initial civil penalty of up to \$10,000, and up to \$1,000 for each day the violation continues until it is corrected.^[9] This civil penalty may be recovered in a civil action, and the court may also grant reasonable attorneys' fees and litigation costs to a prevailing plaintiff.^[10] Any restitution paid by the defendant is credited against its liability under SB 362.^[11] Claims under SB 362 generally must be filed within three years after the identification device is implanted.^[12]

California is not the first state to prohibit the mandatory implantation of an RFID or other identification device in a human. Wisconsin and North Dakota have already implemented similar laws.

^[1] SB 362, Cal. Civ. Code Section 52.7(a). The "persons" covered by SB 362 include individuals, business associations, partnerships, limited partnerships, corporations, limited liability companies, trusts, estates, cooperative associations, or other entities. SB 362, Cal. Civ. Code Section 52.7(h)(2).

^[2] SB 362, Cal. Civ. Code Section 52.7(h)(4). SB 362 also defines "require, coerce, or compel" to include physical violence, threat, intimidation, retaliation, the conditioning of any private or public benefit or care on consent to implantation, or "other means that causes a reasonable person of ordinary susceptibilities to acquiesce to implementation when he or she otherwise would not." *Id.*

^[3] SB 362, Cal. Civ. Code Section 52.7(h)(1). For purposes of SB 362, "personal information" includes an individual's first or last name; address; telephone number; email, internet protocol or web site address; date of birth; driver's license number or California identification number; any unique personal identification number contained or encoded on a driver's license or identification card issued pursuant to Section 13000 of the

Vehicle Code; bank, credit card, or other financial institution account number; 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; religion; ethnicity or nationality; photograph; fingerprint or other biometric identifier; Social Security number; or any unique personal identifier. SB 362, Cal. Civ. Code Section 52.7(h)(3).

[4] SB 362, Cal. Civ. Code Section 52.7(h)(5).

[5] SB 362, Cal. Civ. Code Section 52.7(e).

[6] SB 362, Cal. Civ. Code Section 52.7(b)(2).

[7] *Id.*

[8] SB 362, Cal. Civ. Code Section 52.7(e).

[9] SB 362, Cal. Civ. Code Section 52.7(b)(1). The recoverable litigation costs include expert witness fees and expenses. *Id.*

[10] *Id.*

[11] SB 362, Cal. Civ. Code Section 52.7(d).

[12] SB 362, Cal. Civ. Code Section 52.7(c)(1). If the individual was a dependent adult or minor when the implantation occurred, the action may be brought 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 reaches the age of majority, whichever is later. SB 362, Cal. Civ. Code 52.7(c)(2). SB 362 provides that it does 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." SB 362, Cal. Civ. Code Section 52.7(g).