



Legislative Briefs

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HUMAN MICROCHIP IMPLANTATION

2005 Wisconsin Act 482, passed by the legislature and signed by Governor Jim Doyle on May 30, 2006, prohibits the required implanting of microchips in humans. It is the first law of its kind in the nation reflecting a proactive attempt to prevent potential abuses of this emergent technology.

BACKGROUND

Microchip implantation technology has been widely used for pets and livestock for a number of years, but has only recently been developed for human use. In October 2004, the U.S. Food and Drug Administration (FDA) cleared a radio frequency identification (RFID) microchip for medical use in humans. It is made by VeriChip Corporation, to whose board of directors former Governor Tommy Thompson was appointed in July 2005. Currently, human RFID implantation is used for medical records, a form of identification, and as a timesaving device.

Medical Records. The technology used by VeriChip allows a hospital with a special scanner to read a unique medical identification code in the microchip. Medical personnel can then input that code into a computer database and quickly locate medical records for a patient. This could save precious time during an emergency or reduce risks when treating a patient with dementia.

Security. This technology is also being used for improved safety and security. Some organizations have already begun to use implanted microchips as an electronic key to provide access to highly sensitive areas.

Convenience. As with most technology, it can be seen as a timesaving convenience. Some night clubs in Europe already allow patrons with microchip implants to pay with the electronic codes they carry under their skin, and some in the U.S. have experimented with programming computers to read RFID implanted microchips to accomplish such tasks as unlocking a car with a wave of the hand.

HEALTH AND PRIVACY CONCERNS

2005 Wisconsin Act 482 is not intended to prohibit human microchip implantations, but is generally seen as a first step in regulating a procedure that has raised health and privacy concerns.

Health Risks. As with any surgery, health risks are involved. The FDA has reported on the specific risks of the VeriChip microchip, some of which are: adverse tissue reaction, migration of implanted transponder, electromagnetic interference, electrical hazards, and magnetic resonance imaging incompatibility.

Identity Theft. Privacy advocates warn that carrying personal identification on an RFID microchip may lead to more identity theft. Although the current technology requires a sensor to be very close to the microchip, and the microchips only contain an identification code, some have compared this technology to wearing your Social Security number on your sleeve.

Mass Implantation. Civil libertarians warn that human implantation has not received enough debate and may put us on a slippery slope toward a system of human

numbering. They contend that human microchip implantation will first be sold to the populace as being beneficial, fun, and ultra-convenient, convincing many that microchip implantations are benign.

Some worry that mass implantation will lead to large scale abuse. For example, U.S. Senator Arlen Specter reported that Columbian President Alvaro Uribe suggested that Columbian seasonal workers could have microchips implanted into their bodies before being permitted to enter the U.S. The senator's reported objection to this idea centered on its lack of effectiveness, as immigrant workers might be able to remove the microchips.

LEGISLATIVE HISTORY

2005 Wisconsin Act 482 has only two provisions. It prohibits requiring anyone to undergo a microchip implantation and provides that violators forfeit up to \$10,000 per day. Although the act has a limited scope, the legislative debate reflected a wide-ranging discussion of potential applications.

2005 Assembly Bill 290. On April 4, 2005, Assembly Bill 290 was introduced by Representative Marlin Schneider to prohibit requiring an individual to undergo microchip implantation and subject a violator to the equivalent of a Class A forfeiture from the Criminal Code. The drafting record describes a proposal to prohibit requiring, coercing, or attempting to coerce any individual into having a microchip implanted. As introduced, the legislation did not mention "coercing or attempting to coerce," and instead focused on "required" implanting.

Amendments. Two amendments were adopted during the legislative process. In the assembly, a simple amendment was passed to reduce the scope of the prohibition on required human microchip implantation, but a senate substitute amendment subsequently reversed

those changes. Assembly Amendment 1 to 2005 Assembly Bill 290 would have allowed requiring microchip implantation of certain sex offenders and minors at the direction of their parents. It was introduced by Representative Scott Suder, the author of 2005 Wisconsin Act 431, which requires that certain sex offenders receive lifetime tracking with a global positioning system. Senate Substitute Amendment 1 to 2005 Assembly Bill 290 removed the exceptions introduced by Assembly Amendment 1 and returned the language to its original form.

OTHER STATES

At least 17 states have introduced or considered legislation in 2006 related to RFIDs, including Rhode Island which considered a bill to restrict the use of RFIDs for the purpose of tracking the movement or identity of an employee, student, or client as a condition of obtaining a benefit or services. Some states, such as New Hampshire and Georgia, are studying the issue. The New Hampshire Legislature passed a law on May 24, 2006, creating the Commission on the Use of Radio Frequency Technology to study the benefits and potential privacy implications. In Georgia, a resolution adopted on March 28, 2006, created the House Study Committee on Biological Privacy. Few states have taken the step toward regulating human implantation of RFID microchips. Legislation was introduced in New Jersey on May 15, 2006, to prohibit requiring an individual to have a microchip implanted, to require an informed written consent before implantation, and to entitle those implanted to have the microchip removed at any time.

FOR FURTHER INFORMATION

View a copy of 2005 Wisconsin Act 482 at www.legis.state.wi.us