

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Regulation Committee

BILL: SB 2220

INTRODUCER: Senator Posey

SUBJECT: Implanted Microchips

DATE: March 17, 2007

REVISED: 03/21/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HR</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>JU</u>	<u></u>
3.	<u></u>	<u></u>	<u>CJ</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill creates a third-degree felony offense that makes a person liable for knowingly implanting a microchip or similar monitoring device into a person without providing full disclosure to that person regarding the use of the device and obtaining the person's informed written consent. The offense is punishable by imprisonment of up to five years and the imposition of a fine of up to \$5,000.

This bill creates one undesignated section of law.

II. Present Situation:

Informed Consent

Section 766.103, F.S., is the Florida Medical Consent Law. Under s. 766.103, F.S., a duty is imposed on a Florida-licensed medical physician, osteopathic physician, chiropractic physician, podiatric physician, or dentist to obtain the informed consent of a patient for treating, examining, or operating on the patient. Subsection (3) of s. 766.103, F.S., provides that no recovery is allowed in any court in Florida against such health care providers in an action brought for treating, examining, or operating on a patient without informed consent if:

- The action of the health care provider in obtaining informed consent of the patient or another person authorized to give consent for the patient was in accordance with accepted standards of medical practice among the members of the medical profession with similar training and experience in the same or similar medical community; and
- A reasonable individual, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among health care providers in the same or similar community who perform similar treatments or procedures; or
- The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the health care provider.

A written consent, if validly signed by the patient or another authorized person, meets the requirements of s. 766.103(3), F.S., and raises a rebuttable presumption of a valid consent. A valid signature is one, which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.

Under s. 401.445, F.S., no recovery is allowed in any court in Florida against any emergency medical technician, paramedic, or physician or any person acting under the direct medical supervision of a physician, in an action brought for examining or treating a patient without his or her informed consent if: the patient at the time of the examination or treatment is intoxicated, under the influence of drugs, or otherwise incapable of providing informed consent as required by s. 766.103, F.S.; the patient at the time of the examination or treatment is experiencing an emergency medical condition; and the patient would reasonably, under all the surrounding circumstances, undergo such examination, treatment, or procedure if he or she were advised by the emergency medical technician, paramedic, or physician in accordance with s. 766.103, F.S.

Implantable Microchip Technology

The American Heritage Dictionary defines “chip” to mean a minute slice of a semiconducting material, such as silicon or germanium, doped and otherwise processed to have specified electrical characteristics.¹ Microchip technology exists that may be implanted into humans for tracking and identifying a patient. The manufacturer of the VeriChip® claims that it is the only company in the world today to offer an implantable radio-frequency-identification microchip, which has been approved by the U.S. Food and Drug Administration and offers this option in its VeriMed and VeriGuard systems.² The VeriMed Patient Identification System®, which consists of a hand-held radio-frequency-identification scanner, an implantable radio-frequency-identification microchip, and a secure patient database, is being used to help rapidly identify and provide access to important health information on participating patients.

¹ See the American Heritage Dictionary of the English Language. Fourth Edition, Houghton Mifflin Company, ©2000.

² See the website for the Verichip Corporation at <http://www.verichipcorp.com/index.html> (Last visited on March 17, 2007).

Implantable devices are devices that may be partially or totally inserted or grafted into the body for prosthetic, therapeutic, or diagnostic purposes. Such devices include a piece of tissue, a tooth, a pellet of medicine, or a tube or needle containing a radioactive substance, a graft, or an insert. Liquid and solid plastic materials are used to augment tissues or to fill in areas traumatically or surgically removed.

III. Effect of Proposed Changes:

The bill creates a third-degree-felony offense that makes a person liable for knowingly implanting a microchip or similar monitoring device into a person without providing full disclosure to that person regarding the use of the device and obtaining the person's informed written consent. The offense is punishable by imprisonment of up to five years and the imposition of a fine of up to \$5,000.

The bill provides an effective date of July 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The bill does not define the term "similar monitoring device." It is not clear whether the criminal penalty would be applicable to device, which is used for prosthetic, therapeutic, or diagnostic purposes. Establishing a criminal penalty for acts that are prohibited or required, but that are not clearly defined, is likely to be void for vagueness or for overbreadth under the due process clauses of the state and federal constitutions. Both constitutions prohibit a statute from forbidding or requiring the doing of an act in terms so vague that persons of common understanding must necessarily guess at its meaning and differ as to its application. *Brock v. Hardie*, 154 So. 690 (Fla. 1934). A statute is overbroad when its proscriptive language embraces not only acts properly and legally punishable, but others, which are constitutionally protected or outside, the police power of the state to regulate. *Locklin v. Pridgeon*, 30 So.2d 102 (Fla. 1947).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference has not yet considered the impact of the bill, but it is expected that the bill's fiscal impact will be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

For purpose of obtaining informed consent, the Florida Medical Consent Law authorizes the provision of medical care if the patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he or she been advised by the health care provider. It is unclear whether there is an intent for this bill to apply to the acts of medical diagnosis, treatment, or prescription of a human illness so that a person's full *informed written consent* would be needed for purposes of implanting a device into that person's body.

VIII. Summary of Amendments:

Barcode 855574 by Health Regulation:

The amendment revises the criminal offense created in the bill to specify that the implanted microchip or similar device is for tracking or identification purposes.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
