

MICROCHIP PROTECTION ACT

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House Bill 5672 as reported from committee
Sponsor: Rep. Bronna Kahle
1st Committee: Commerce and Tourism
2nd Committee: Ways and Means
Complete to 6-24-20

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5672 would create a new act, the Microchip Protection Act, to prohibit employers from requiring employees or prospective employees to have devices put in their bodies as a condition of employment or an employment benefit.

FISCAL IMPACT: House Bill 5672 would have an indeterminate fiscal impact on local court funding units. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

THE APPARENT PROBLEM:

Even though humans have been using microchips to monitor their pets' whereabouts for decades, the United States Food and Drug Administration first approved a microchip for humans in 2004.¹ The microchip was intended to be used for medical purposes, such as allowing doctors and other medical personnel to quickly access a patient's medical record, but was quickly adapted to other uses, such as allowing entry to clubs or paying for expenses. Most recently, one Wisconsin company became the first in the United States to microchip its employees when, in 2017, employees of the company volunteered to have a microchip implanted to facilitate such things as opening doors, logging into computers, and paying for food in the cafeteria.² While in that case employee involvement was voluntary, some are concerned that employees could be required to have a device implanted as a condition of employment, and feel that such a requirement would violate their privacy and right to work. Legislation has been proposed to prohibit employers from requiring employees to have microchips implanted in their bodies as a condition of employment.

THE CONTENT OF THE BILL:

Under the bill, an employer or agent of an employer could not require an employee or prospective employee to do any of the following as a condition of being employed, being employed in a particular position, or receiving additional compensation or other benefits:

- Implant or have implanted an acoustic, optical, mechanical, electronic, medical, or molecular device into his or her body.
- Inject or have injected such a device into his or her body.
- Ingest, inhale, or otherwise incorporate such a device into his or her body.

¹ http://www.nbcnews.com/id/6237364/ns/health-health_care/t/fda-approves-computer-chip-humans/#.XvERoahKhPY

² <https://www.bbc.com/news/world-us-canada-40710051>

An employer could not discriminate against an employee with regard to compensation, other benefits, or any condition of employment based on the employee's refusal to take an action described above. However, an employer could require an employee or prospective employee to comply with a court order directing the employee or prospective employee to take an action described above.

An employee or prospective employee could bring a civil action against an employer to enforce the above prohibitions. The court could do either or both of the following if, in such an action, an employer was found to have violated the above prohibitions:

- Award the prevailing employee or prospective employee actual damages, court costs and reasonable attorney fees, or both damages and those costs and fees.
- Enjoin further violation of this act.

Finally, the act states that it would not limit an employee's or prospective employee's rights or remedies under any other state or federal law.

ARGUMENTS:

For:

In the current era of continual technological advances, defining and maintaining privacy rights in the face of what these new technologies can do is itself a continual process. Many believe that for an employer to force its employees to be microchipped as a condition of employment would be a violation of employee privacy. While many uses of the technology (e.g., unlocking doors) might be helpful to an employee throughout his or her day, other possible uses (e.g., secretly logging bathroom breaks or various other forms of location tracking) can seem more personally invasive. Concerns have also been raised about the security of the devices and whether they could be hacked.

Against:

No arguments against the bill were presented during committee testimony.

POSITIONS:

The following entities indicated support for the bill:

- Michigan Department of Civil Rights (6-24-20)
- AFSCME Council 25 (6-10-20)
- ACLU of Michigan (6-10-20)

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