

4755

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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Introduced by Sen. ADDABBO -- read twice and ordered printed, and when  
printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to electronic monitoring

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The civil rights law is amended by adding a new section  
2     52-a to read as follows:

3     S 52-A. EMPLOYERS ENGAGED IN ELECTRONIC MONITORING; PRIOR NOTICE  
4     REQUIRED. 1. FOR PURPOSES OF THIS SECTION, EMPLOYER MEANS ANY INDIVID-  
5     UAL, CORPORATION, PARTNERSHIP, FIRM, OR ASSOCIATION WITH A PLACE OF  
6     BUSINESS IN THE STATE. IT SHALL NOT INCLUDE THE STATE OR ANY POLITICAL  
7     SUBDIVISION OF THE STATE.

8     2. (A) ANY EMPLOYER WHO MONITORS OR OTHERWISE INTERCEPTS TELEPHONE  
9     CONVERSATIONS OR TRANSMISSIONS, ELECTRONIC MAIL OR TRANSMISSIONS, OR  
10    INTERNET ACCESS OR USAGE OF OR BY AN EMPLOYEE BY ANY ELECTRONIC DEVICE  
11    OR SYSTEM, INCLUDING BUT NOT LIMITED TO THE USE OF A COMPUTER, TELE-  
12    PHONE, WIRE, RADIO, OR ELECTROMAGNETIC, PHOTOELECTRONIC OR PHOTO-OPTICAL  
13    SYSTEMS, SHALL GIVE PRIOR WRITTEN NOTICE UPON HIRING AND ONCE ANNUALLY  
14    TO ALL EMPLOYEES WHO ARE SUBJECT TO ELECTRONIC MONITORING. THE NOTICE  
15    REQUIRED BY THIS SUBDIVISION SHALL BE IN WRITING, IN AN ELECTRONIC  
16    RECORD, OR IN ANOTHER ELECTRONIC FORM AND ACKNOWLEDGED BY THE EMPLOYEE  
17    EITHER IN WRITING OR ELECTRONICALLY. EACH EMPLOYER SHALL ALSO POST THE  
18    NOTICE OF ELECTRONIC MONITORING IN A CONSPICUOUS PLACE WHICH IS READILY  
19    AVAILABLE FOR VIEWING BY ITS EMPLOYEES.

20    (B) THE NOTICE SHALL CONTAIN THE FOLLOWING:

21    (I) THE FORM OF COMMUNICATION AND/OR COMPUTER USAGE THAT WILL BE MONI-  
22    TORED,

23    (II) THE MEANS BY WHICH MONITORING WILL BE ACCOMPLISHED,

24    (III) THE FREQUENCY OF MONITORING, AND

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (IV) THE MANNER IN WHICH THE INFORMATION OBTAINED BY SUCH MONITORING  
2 WILL BE COLLECTED, STORED, AND USED.

3 3. IN ANY CIVIL ACTION ALLEGING A VIOLATION OF THIS SECTION, THE COURT  
4 MAY:

5 (A) AWARD DAMAGES AND REASONABLE ATTORNEYS' FEES AND COSTS TO A  
6 PREVAILING PLAINTIFF; AND

7 (B) AFFORD INJUNCTIVE RELIEF AGAINST ANY EMPLOYER THAT COMMITS OR  
8 PROPOSES TO COMMIT A VIOLATION OF THIS SECTION.

9 4. THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS SECTION.  
10 ANY EMPLOYER FOUND TO BE IN VIOLATION OF THIS SECTION SHALL BE SUBJECT  
11 TO A MAXIMUM CIVIL PENALTY OF FIVE HUNDRED DOLLARS FOR THE FIRST  
12 OFFENSE, ONE THOUSAND DOLLARS FOR THE SECOND OFFENSE AND THREE THOUSAND  
13 DOLLARS FOR THE THIRD AND EACH SUBSEQUENT OFFENSE.

14 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PROCESSES THAT  
15 ARE DESIGNED TO MANAGE THE TYPE OR VOLUME OF INCOMING OR OUTGOING ELEC-  
16 TRONIC MAIL OR TELEPHONE VOICE MAIL OR INTERNET USAGE, THAT ARE NOT  
17 TARGETED TO MONITOR OR INTERCEPT THE ELECTRONIC MAIL OR TELEPHONE VOICE  
18 MAIL OR INTERNET USAGE OF A PARTICULAR INDIVIDUAL, AND THAT ARE  
19 PERFORMED SOLELY FOR THE PURPOSE OF COMPUTER SYSTEM MAINTENANCE AND/OR  
20 PROTECTION.

21 S 2. This act shall take effect on the one hundred eightieth day after  
22 it shall have become a law.