S T A T E O F N E W Y O R K

3871--B

Cal. No. 293

2009-2010 Regular Sessions

I N A S S E M B L Y

January 28, 2009

Introduced by M. of A. ROSENTHAL, MAISEL, JAFFEE, ZEBROWSKI, REILLY, GOTTFRIED, CAHILL, JOHN, KELLNER -- Multi-Sponsored by -- M. of A. GALEF, HEASTIE, KOON, PHEFFER, SCHIMEL -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

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

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

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

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

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(B) FOR PURPOSES OF WRITTEN NOTICE REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION, AN EMPLOYEE SHALL BE ADVISED THAT ANY AND ALL TELEPHONE CONVERSATIONS OR TRANSMISSIONS, ELECTRONIC MAIL OR TRANSMISSIONS, OR INTERNET ACCESS OR USAGE OF BY AN EMPLOYEE BY ANY ELECTRONIC DEVICE OR SYSTEM, INCLUDING BUT NOT LIMITED TO THE USE OF A COMPUTER, TELEPHONE, WIRE, RADIO OR ELECTROMAGNETIC, PHOTOELECTRONIC OR PHOTO-OPTICAL SYSTEMS MAY BE SUBJECT TO MONITORING AT ANY AND ALL TIMES AND BY ANY LAWFUL MEANS.

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

4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO PROCESSES THAT ARE DESIGNED TO MANAGE THE TYPE OR VOLUME OF INCOMING OR OUTGOING ELECTRONIC MAIL OR TELEPHONE VOICE MAIL OR INTERNET USAGE, THAT ARE NOT TARGETED TO MONITOR OR INTERCEPT THE ELECTRONIC MAIL OR TELEPHONE VOICE MAIL OR INTERNET USAGE OF A PARTICULAR INDIVIDUAL, AND THAT ARE PERFORMED SOLELY FOR THE PURPOSE OF COMPUTER SYSTEM MAINTENANCE AND/OR PROTECTION.

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