

5364

2011-2012 Regular Sessions

I N S E N A T E

May 12, 2011

Introduced by Sen. ROBACH -- 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 TO ALL EMPLOYEES
14 WHO ARE SUBJECT TO ELECTRONIC MONITORING. THE NOTICE REQUIRED BY THIS
15 SUBDIVISION SHALL BE IN WRITING, IN AN ELECTRONIC RECORD, OR IN ANOTHER
16 ELECTRONIC FORM AND ACKNOWLEDGED BY THE EMPLOYEE EITHER IN WRITING OR
17 ELECTRONICALLY. EACH EMPLOYER SHALL ALSO POST THE NOTICE OF ELECTRONIC
18 MONITORING IN A CONSPICUOUS PLACE WHICH IS READILY AVAILABLE FOR VIEWING
19 BY ITS EMPLOYEES WHO ARE SUBJECT TO ELECTRONIC MONITORING.

20 (B) FOR PURPOSES OF WRITTEN NOTICE REQUIRED BY PARAGRAPH (A) OF THIS
21 SUBDIVISION, AN EMPLOYEE SHALL BE ADVISED THAT ANY AND ALL TELEPHONE
22 CONVERSATIONS OR TRANSMISSIONS, ELECTRONIC MAIL OR TRANSMISSIONS, OR
23 INTERNET ACCESS OR USAGE OF BY AN EMPLOYEE BY ANY ELECTRONIC DEVICE OR
24 SYSTEM, INCLUDING BUT NOT LIMITED TO THE USE OF A COMPUTER, TELEPHONE,
25 WIRE, RADIO OR ELECTROMAGNETIC, PHOTOELECTRONIC OR PHOTO-OPTICAL SYSTEMS

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

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1 MAY BE SUBJECT TO MONITORING AT ANY AND ALL TIMES AND BY ANY LAWFUL
2 MEANS.

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

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

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