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To prevent abuses of electronic monitoring in the workplace.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1993

Mr. WILLIAMS (for himself, Mr. FORD of Michigan, Mr. CLAY, Mr. MILLER of California, Mr. MURPHY, Mr. KILDEE, Mr. OWENS, Mr. SAWYER, Mr. EDWARDS of California, Mr. BERMAN, Mr. WASHINGTON, Mr. PASTOR, Mr. SOLOMON, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Education and Labor

JUNE 23, 1993

Additional sponsors: Mr. STOKES, Mr. DELLUMS, Mr. WHEAT, Mr. BROWDER, Mr. STARK, Mrs. CLAYTON, Mr. LIPINSKI, Mr. HOCHBRUECKNER, Mrs. UNSOELD, Ms. PELOSI, Mr. VENTO, Mr. WAXMAN, Mr. FILNER, Mr. ROMERO-BARCELÓ, Mr. SCHIFF, Ms. WOOLSEY, Mr. SKAGGS, Mr. MINETA, Mr. SPRATT, Mr. SANGMEISTER, Mr. BONIOR, Mr. TRAFICANT, Mr. MATSUI, Mr. RAVENEL, Mr. STUPAK, Mr. SPENCE, Mr. PARKER, Mr. SLATTERY, Mr. DERRICK, Mr. BOEHLERT, Mr. VOLKMER, Mr. INGLIS of South Carolina, Mr. DARDEN, Mr. DURBIN, Mr. SCOTT, Mr. BEILENSON, Mr. YATES, Mr. FISH, Mr. CLYBURN, Mr. GONZALEZ, Mr. BROWN of Ohio, Mrs. MINK, Mr. OLVER, and Ms. VELÁZQUEZ

Deleted sponsor: Ms. ENGLISH of Arizona (added May 6, 1993; deleted June 18, 1993)

SEPTEMBER 14, 1993

Additional sponsors: Mr. GLICKMAN, Mr. SABO, Ms. NORTON, Mr. McDERMOTT, Mr. HAMBURG, Mr. BECERRA, Mr. GENE GREEN of Texas, Mr. SCHUMER, Mr. FOGLIETTA, Mr. DE LUGO, Mr. SERRANO, Mr. APLEGATE, Mr. EVANS, Mr. FINGERHUT, Mr. PALLONE, Mr. PRICE of North Carolina, Mrs. LOWEY, Mr. RANGEL, Mr. DEFazio, Mr. FROST, Mr. SYNAR, Mr. TORRES, Mr. McCURDY, Mr. OBERSTAR, Ms. KAPTUR, Mr. WILSON, Mr. KOPETSKI, Mr. FAZIO, Mrs. MALONEY, Mr. McCLOSKEY, Mr. BACCHUS of Florida, Mr. GEPHARDT, Mr. NEAL of Massachusetts, Mr. JEFFERSON, Mr. BORSKI, Mrs. SCHROEDER, Mr. PETERSON of Minnesota, Mr. ACKERMAN, Mr. COOPER, Miss COLLINS of Michigan, Mr. ENGLISH of Oklahoma, Ms. BYRNE, Mr. KREIDLER, Mr. SANDERS, Mr. CRAMER, Mr. TOWNS, Mr. BRYANT, Mr. DEUTSCH, Mr. GEJDENSON,

Ms. ROYBAL-ALLARD, Mr. PENNY, Mr. STUDDS, Mr. RUSH, Ms. ESHOO,
Mr. MINGE, Mr. COSTELLO, Mr. COLEMAN, and Mr. HAMILTON

A BILL

To prevent abuses of electronic monitoring in the workplace.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Privacy for Consumers
5 and Workers Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) ELECTRONIC MONITORING.—

9 (A) IN GENERAL.—Except as provided in
10 subparagraph (C), the term “electronic mon-
11 itoring” means the collection, storage, analysis,
12 or reporting of information concerning an em-
13 ployee’s activities by means of a computer, elec-
14 tronic observation and supervision, telephone
15 service observation, telephone call accounting,
16 or other form of visual, auditory, or computer-
17 based technology which is conducted by any
18 method other than direct observation by an-
19 other person, including the following methods:
20 Transfer of signs, signals, writing, images,

1 sounds, data, or intelligence of any nature
2 which are transmitted in whole or in part by a
3 wire, radio, electromagnetic, photoelectronic, or
4 photo-optical system.

5 (B) TELEPHONE CALL ACCOUNTING.—For
6 purposes of subparagraph (A), the term “tele-
7 phone call accounting” means the practice of
8 recording the telephone numbers called by a
9 specific telephone or group of telephones, in-
10 cluding—

11 (i) the telephone number from which
12 a call is being made,

13 (ii) the telephone number which is
14 being called,

15 (iii) the time when the telephone call
16 was connected,

17 (iv) the time when the telephone call
18 was completed, and

19 (v) identification of the operator, if
20 any, who assisted in placing the telephone
21 call,

22 for the purpose of individual employee evaluations or
23 the setting of production quotas or work perform-
24 ance expectations.

1 (C) EXCLUSION.—The term “electronic
2 monitoring” does not include—

3 (i) wiretapping, or

4 (ii) the electronic transfer of—

5 (I) payroll data,

6 (II) insurance and other benefit
7 data,

8 (III) employee job application
9 data, or

10 (IV) other personnel-related data
11 which an employer may collect under
12 section 5(a),

13 for administrative purposes only.

14 (2) EMPLOYEE.—The term “employee” means
15 any current, former, or leased employee of an em-
16 ployer.

17 (3) EMPLOYER.—The term “employer” means
18 any person who—

19 (A) is engaged in commerce, and

20 (B) who employs employees,

21 and includes any individual, corporation, partner-
22 ship, labor organization, unincorporated association,
23 or any other legal business, the Federal Government,
24 any State (or political subdivision thereof), and any
25 agent of the employer.

1 (4) PERSONAL DATA.—The term “personal
2 data” means any information concerning an em-
3 ployee which, because of name, identifying number,
4 mark, or description, can be readily associated with
5 a particular individual, and such term includes infor-
6 mation contained in printouts, forms, or written
7 analyses or evaluations.

8 (5) PROSPECTIVE EMPLOYEE.—The term “pro-
9 spective employee” means an individual who has ap-
10 plied for a position of employment with an employer.

11 (6) TELEPHONE SERVICE OBSERVATION.—The
12 term “telephone service observation” means the
13 practice of listening to or recording telephone calls
14 being made by, or received by, an employee in order
15 to monitor the quality of service provided by the
16 employee.

17 (7) SECRETARY.—The term “Secretary” means
18 the Secretary of Labor.

19 **SEC. 3. GENERAL REQUIREMENTS.**

20 (a) ENGAGING IN ELECTRONIC MONITORING.—An
21 employer may engage in electronic monitoring of the em-
22 ployer’s employees if—

23 (1) the employer provides the notices required
24 by section 4,

1 (2) if section 5 applies, the employer complies
2 with the requirements of such section,

3 (3) the employer complies with section 9, and

4 (4) the employer does not violate section 11.

5 (b) REVIEW AND USE.—An employer may review
6 data obtained by electronic monitoring of the employer's
7 employees if the employer meets the requirements of sec-
8 tion 6 and may use such data if the employer meets the
9 requirements of section 8.

10 **SEC. 4. NOTICE REQUIREMENTS.**

11 (a) SECRETARY'S NOTICE.—The Secretary shall pre-
12 pare, have printed, and distribute to employers a notice
13 which will inform employees—

14 (1) that an employer engages in or may engage
15 in electronic monitoring of employees and specifies
16 the circumstances (including the monitoring and ex-
17 ception described in section 5) under which an em-
18 ployee is or is not entitled to additional notice under
19 this section, and

20 (2) of the rights and protections provided to
21 employees by this Act.

22 Each employer who engages in electronic monitoring shall
23 post and maintain such notice in conspicuous places on
24 its premises where notices to employees are customarily
25 posted.

1 (b) EMPLOYER'S SPECIFIC NOTICE.—Each employer
2 shall provide to each employee who will be electronically
3 monitored with prior written notice describing the follow-
4 ing regarding the electronic monitoring of such employee:

5 (1) The forms of electronic monitoring to be
6 used.

7 (2) The personal data to be collected.

8 (3) The hours and days per week that electronic
9 monitoring will occur.

10 (4) The use to be made of personal data col-
11 lected.

12 (5) Interpretation of printouts of statistics or
13 other records of information collected through elec-
14 tronic monitoring if the interpretation affects the
15 employees.

16 (6) Existing production standards and work
17 performance expectations.

18 (7) Methods for determining production stand-
19 ards and work performance expectations based on
20 electronic monitoring statistics if the methods affect
21 the employees.

22 The notice required by this subsection shall also include
23 a description of the monitoring and the exception which
24 is authorized under section 5(c)(1) to be undertaken with-
25 out providing such notice.

1 (c) EMPLOYER'S NOTICE TO PROSPECTIVE EMPLOY-
2 EES.—

3 (1) IN GENERAL.—Each employer shall notify a
4 prospective employee at the first personal interview
5 of existing forms of electronic monitoring conducted
6 by the employer which may affect the prospective
7 employee if such employee is hired by the employer.

8 (2) SPECIFIC NOTICE.—Each employer, upon
9 request by a prospective employee or when the em-
10 ployer offers employment to a prospective employee,
11 shall provide the prospective employee with the writ-
12 ten notice described in subsection (b).

13 (d) CUSTOMER NOTICE.—Employers who engage in
14 the practice of telephone service observation shall inform
15 customers who may be subject to such observation of such
16 practice in any recorded message used in connection with
17 customer telephone calls. If the employer does not use
18 such a recorded message, the employer shall prominently
19 place in each of its customer bills a statement that the
20 employer is engaging in such practice.

21 (e) PUBLIC NOTICE.—If an employer engages in elec-
22 tronic monitoring which may include members of the pub-
23 lic who are not employees of the employer, the employer
24 shall notify such individuals of such monitoring. Such no-
25 tice may take the form that is reasonably calculated to

1 reach members of the public who may be affected by such
2 monitoring.

3 **SEC. 5. PERIODIC OR RANDOM ELECTRONIC MONITORING.**

4 (a) GENERAL RULE.—No employer may engage in
5 electronic monitoring of any of the employer's employees
6 on a periodic or random basis except as authorized by sub-
7 section (b).

8 (b) AUTHORITY.—

9 (1) NEW EMPLOYEES.—An employer may en-
10 gage in random and periodic monitoring of an em-
11 ployee of such employer if the cumulative total pe-
12 riod of such employee's employment is not more
13 than 60 days.

14 (2) OTHER EMPLOYEES.—An employer may not
15 engage in random and periodic monitoring of an em-
16 ployee with a cumulative employment period with
17 such employer of at least 5 years.

18 (3) WORK GROUPS.—An employer may engage
19 in electronic monitoring of an employee of such em-
20 ployer who has a cumulative employment period with
21 such employer of less than 5 years and who is in a
22 work group of employees on a periodic or random
23 basis for not more than 2 hours in any week. Except
24 as provided in subsection (c), the section 4(b) notice
25 to each employee within such work group for such

1 monitoring shall be provided at least 24 hours but
2 not more than 72 hours before engaging in such
3 monitoring. For purposes of this subsection, the
4 term “work group” means a group of employees em-
5 ployed in a single facility and engaged in substan-
6 tially similar work at a common time and in physical
7 proximity to each other.

8 (c) EXCEPTION TO NOTICE REQUIREMENT.—

9 (1) IN GENERAL.—Subject to paragraph (2), if
10 an employer has a reasonable suspicion that any em-
11 ployee is engaged in conduct which—

12 (A) violates criminal or civil law or con-
13 stitutes willful gross misconduct, and

14 (B) adversely affects the employer’s inter-
15 ests or the interests of such employer’s employ-
16 ees,

17 the employer may engage, on the employer’s work-
18 site, in electronic monitoring of such employee or of
19 an area in which the actions described in subpara-
20 graphs (A) and (B) occur without providing the no-
21 tice required by section 4(b) and without regard to
22 subsection (a) or (b) of section 9.

23 (2) STATEMENT.—Before engaging in the elec-
24 tronic monitoring described in paragraph (1), an
25 employer shall execute a statement setting forth—

1 (A) with particularity the conduct which is
2 being monitored and the basis for the monitor-
3 ing, and

4 (B) an identification of the specific eco-
5 nomic loss or injury to the business of the em-
6 ployer resulting from such conduct or the injury
7 to the interests of such employer's employees.

8 The employer shall sign the statement and retain it
9 for 3 years from the date the monitoring began or
10 until judgment is rendered in an action brought
11 under section 12(c) by an employee affected by such
12 monitoring, whichever is later.

13 **SEC. 6. REVIEW OF CONTINUOUS ELECTRONIC MONITOR-**
14 **ING.**

15 (a) REVIEW DURING MONITORING.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), no employer may review data, obtained by
18 continuous electronic monitoring of the employer's
19 employees, on a periodic or random basis.

20 (2) EXCEPTION.—The following are not subject
21 to paragraph (1):

22 (A) the review by an employer of electronic
23 data obtained from the use of an electronic card
24 system,

1 (B) the review of electronic data obtained
2 from video monitoring (with or without an
3 audio track) which is used to deter crime by
4 persons and to provide evidence to law enforce-
5 ment personnel, and

6 (C) the review of data which is continu-
7 ously monitored by an employer and which ap-
8 pears simultaneously on multiple television
9 screens or sequentially on a single screen.

10 (b) REVIEW AFTER MONITORING.—An employer may
11 review data obtained by continuous electronic monitoring
12 of the employer’s employees after the monitoring was com-
13 pleted only if review was limited to specific data which
14 the employer has reason to believe contains information
15 relevant to an employee’s work.

16 **SEC. 7. EMPLOYEE REVIEW OF RECORDS.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), each employer shall provide an employee (or the em-
19 ployee’s authorized agent) with a reasonable opportunity
20 to review all personal data obtained by electronic monitor-
21 ing of the employee.

22 (b) EXCEPTION.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), an employer is not required to provide an
25 employee a reasonable opportunity to review data

1 which are obtained by electronic monitoring de-
2 scribed in section 5(c)(1).

3 (2) REVIEW PERMITTED.—If—

4 (A) the investigation by an employer with
5 respect to which electronic monitoring described
6 in section 5(c)(1) was conducted on an em-
7 ployee has been completed, or

8 (B) disciplinary action has been initiated
9 by an employer against the employee who was
10 the subject of such electronic monitoring,

11 whichever occurs first, such employer shall promptly
12 provide such employee with an opportunity to review
13 the personal data obtained from such electronic
14 monitoring.

15 **SEC. 8. USE OF DATA COLLECTED BY ELECTRONIC MON-**
16 **ITORING.**

17 (a) EMPLOYER ACTIONS.—An employer shall not
18 take any action against an employee on the basis of per-
19 sonal data obtained by electronic monitoring of such em-
20 ployee unless the employer has complied with the require-
21 ments of this Act.

22 (b) DATA SHALL NOT BE USED AS SOLE BASIS FOR
23 EVALUATION OR PRODUCTION QUOTAS.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), an employer shall not use quantitative

1 data on an employee which is obtained by electronic
2 monitoring and which records the amount of work
3 performed by such employee within a specific time
4 as the sole basis for—

5 (A) individual employee performance eval-
6 uation, or

7 (B) setting production quotas or work per-
8 formance expectations.

9 (2) EXCEPTION.—If an employee is not working
10 at a facility of an employer and transmits the em-
11 ployee’s work to the employer electronically, such
12 employer may use the quantitative data described in
13 paragraph (1) for the purposes described in sub-
14 paragraphs (A) and (B) of paragraph (1) if such
15 data is the only basis available to such employer for
16 such purposes.

17 **SEC. 9. PRIVACY PROTECTIONS.**

18 (a) COLLECTION.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (2), no employer may intentionally collect per-
21 sonal data about an employee through electronic
22 monitoring if the data are not confined to the em-
23 ployee’s work, unless the employee is a customer of
24 the employer at the time of the electronic monitor-
25 ing.

1 (2) EXCEPTION.—Electronic monitoring by an
2 employer whose purpose and principal effect is to
3 collect data about the work of an employee or to col-
4 lect data on subjects who are not employees of the
5 employer is not prohibited by paragraph (1) because
6 it incidentally collects data which is not confined to
7 such employee’s work.

8 (b) PRIVATE AREAS.—NO EMPLOYER MAY ENGAGE
9 IN ELECTRONIC MONITORING IN—

- 10 (1) bathrooms,
11 (2) locker rooms, or
12 (3) dressing rooms,

13 except that if the employer has a reasonable suspicion that
14 an employee is engaged in conduct which violates civil or
15 criminal law and which adversely affects the employer’s
16 interests or the interests of such employer’s employees, the
17 employer may engage in electronic monitoring of such em-
18 ployee in a place described in paragraph (1), (2), or (3)
19 if the employer executes, in accordance with section
20 5(c)(2), the statement required by such section.

21 (c) FIRST AMENDMENT RIGHTS.—

22 (1) IN GENERAL.—An employer shall not inten-
23 tionally engage in electronic monitoring or use or
24 disseminate personal data obtained by electronic

1 monitoring of an employee when the employee is ex-
2ercising First Amendment rights.

3 (2) EXCEPTION.—Electronic monitoring by an
4 employer whose purpose and principal effect is to
5 collect data about the work of an employee of the
6 employer is not prohibited by paragraph (1) because
7 it collects some incidental data concerning the exer-
8cise of an employee’s First Amendment rights.

9 (d) DISCLOSURE LIMITATIONS.—

10 (1) IN GENERAL.—Except as provided in para-
11graph (2), an employer shall not disclose personal
12 data obtained by electronic monitoring to any person
13 or business entity except to (or with the prior writ-
14 ten consent of) the individual employee to whom the
15 data pertain, unless the disclosure would be—

16 (A) to officers and employees of the em-
17 ployer who have a legitimate need for the infor-
18 mation in the performance of their duties;

19 (B) to a law enforcement agency in con-
20 nection with an investigation or prosecution; or

21 (C) pursuant to the order of a court of
22 competent jurisdiction.

23 (2) EXCEPTION.—An employer may disclose to
24 the public personal data obtained by electronic mon-
25 itoring of an employee if the data contain evidence

1 of illegal conduct by a public official or have a direct
2 and substantial effect on public health or safety.

3 **SEC. 10. ACCESS TO DATA.**

4 When an employer has an immediate need for specific
5 data and if the employee who maintains such data is not
6 available, the employer may access such data if—

7 (1) the data is alphanumeric and do not include
8 data obtained by the aural or visual monitoring of
9 employees or the interception of employee commu-
10 nications,

11 (2) the data will not be used for the purpose of
12 discipline or performance evaluation, and

13 (3) the employer notifies the employee who
14 maintains such data that the employer has accessed
15 such data and provides such notice within a reason-
16 able time after the access has occurred.

17 **SEC. 11. PROHIBITIONS.**

18 No employer may—

19 (1) violate any requirement of this Act,

20 (2) engage in video monitoring with a video
21 camera which is not visible to the subject of the
22 monitoring, except in the case of monitoring de-
23 scribed in section 5(c)(1), 13(a), 13(b), or 13(c)(2),

1 (3) interfere with, or deny the exercise or the
2 attempted exercise by, an employee of any right pro-
3 vided by section 9(c), or

4 (4) discharge, discipline, or in any manner dis-
5 criminate against an employee with respect to the
6 employee's compensation or terms, conditions, or
7 privileges of employment because the employee (or
8 any person acting pursuant to a request of the em-
9 ployee) has—

10 (A) instituted any proceeding relating to a
11 violation of this Act,

12 (B) has testified or is about to testify in
13 any such proceedings, or

14 (C) disclosed information which the em-
15 ployee reasonably believes evidences a violation
16 of this Act.

17 **SEC. 12. ENFORCEMENT PROVISIONS.**

18 (a) CIVIL PENALTIES.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 any employer who violates any provision of this Act
21 may be assessed a civil penalty of not more than
22 \$10,000 for each such violation.

23 (2) CONSIDERATIONS.—In determining the
24 amount of any penalty under paragraph (1), the
25 Secretary shall take into account the previous record

1 of the person in terms of compliance with this Act
2 and the gravity of the violation.

3 (3) ASSESSMENT AND COLLECTION.—Any civil
4 penalty under this subsection shall be assessed by
5 the Secretary and shall be collected in the same
6 manner as is required by subsections (b) through (e)
7 of section 503 of the Migrant and Seasonal Agricul-
8 tural Worker Protection Act (29 U.S.C. 1853) with
9 respect to civil penalties assessed under subsection
10 (a) of such section.

11 (b) ACTIONS BY THE SECRETARY.—The Secretary
12 may bring an action under this section to restrain viola-
13 tions of this Act. The Solicitor of Labor may appear for
14 and represent the Secretary in any litigation brought
15 under this Act. In any action brought under this section,
16 the district courts of the United States shall have jurisdic-
17 tion, for cause shown, to issue temporary or permanent
18 restraining orders and injunctions to require compliance
19 with this Act, including such legal or equitable relief inci-
20 dent thereto as may be appropriate, including employ-
21 ment, reinstatement, promotion, and the payment of lost
22 wages and benefits.

23 (c) PRIVATE CIVIL ACTIONS.—

24 (1) IN GENERAL.—An employer who violates
25 this Act shall be liable to the employee or prospec-

1 tive employee affected by such violation. Such em-
2 ployer shall be liable for such legal or equitable relief
3 as may be appropriate, including employment, rein-
4 statement, promotion, and the payment of lost wages
5 and benefits.

6 (2) JURISDICTION.—An action to recover the li-
7 ability prescribed in paragraph (1) may be main-
8 tained against the employer in any Federal or State
9 court of competent jurisdiction by any person for or
10 on behalf of an employee or prospective employee.

11 (3) LIMITATION.—No such action may be com-
12 menced more than 3 years after the date—

13 (A) the employee knew of, or

14 (B) the employee could reasonably be ex-
15 pected to know of,

16 the alleged violation.

17 (4) COSTS.—The court shall allow the prevail-
18 ing party (other than the United States) reasonable
19 costs, including attorneys' and expert witness fees.

20 (d) WAIVER OF RIGHTS PROHIBITED.—The rights
21 and procedures provided by this Act may not be waived
22 by contract or otherwise, unless such waiver is part of a
23 written settlement agreed to and signed by the parties to
24 a pending action or complaint under this Act.

1 **SEC. 13. APPLICATION.**

2 (a) LAW ENFORCEMENT.—This Act shall not apply
3 to electronic monitoring administered by law enforcement
4 agencies as may otherwise be permitted in criminal inves-
5 tigation.

6 (b) WORKERS' COMPENSATION.—This Act does not
7 apply to electronic monitoring conducted by an employer
8 of the employer's employees in connection with an inves-
9 tigation of a workers' compensation claim.

10 (c) REQUIRED MONITORING.—

11 (1) INTELLIGENCE.—This Act (other than sec-
12 tions 4(a) and 7) shall not apply to electronic mon-
13 itoring conducted by or for—

14 (A) the intelligence community, as defined
15 in Executive Order 12333 (or successor order),
16 or

17 (B) intelligence community contractors
18 with respect to contracts that bear upon na-
19 tional security information, as defined by Exec-
20 utive Order 12356 (or successor order).

21 (2) OTHER MONITORING.—This Act (other than
22 sections 4(a), 4(b)(1), 4(b)(2), 4(b)(4), 7, 8, and 9)
23 shall not apply to electronic monitoring—

24 (A) conducted by an employer pursuant to
25 Federal law (including regulations) governing

1 public safety or security for public transpor-
2 tation,

3 (B) conducted by an employer registered
4 under section 6, 15, 15A, 15B, 15C, or 17A of
5 the Securities Exchange Act of 1934 (15
6 U.S.C. 78 et seq.), section 8(a) of the Invest-
7 ment Company Act of 1940 (15 U.S.C. 80a-
8 1(a)), or sections 202(a)(11) and 203(a) of the
9 Investment Advisers Act of 1940 (15 U.S.C.
10 80b-2(a)(11) and 80b-3(a)), conducted by an
11 employer or a person associated with an em-
12 ployer registered or exempt from such registra-
13 tion under sections 4d, 4e, 4k, or 4m of the
14 Commodity Exchange Act (7 U.S.C. 6d, 6e, 6k,
15 or 6m), conducted by a self-regulatory organiza-
16 tion or its affiliated clearinghouse designated,
17 registered, or exempt from registration under
18 section 6 or 17 of such Act (7 U.S.C. 8, 21),
19 or conducted by an employer who provides an
20 electronic trading system or other facilities for
21 one or more self-regulatory organizations des-
22 ignated, registered, or exempt from registration
23 under section 6 or 17 of such Act (7 U.S.C. 8,
24 21) if such monitoring is confined to manage-
25 ment or professional employees with significant

1 financial responsibility which involves the use of
2 independent judgment,

3 (C) conducted by an employer that is a fi-
4 nancial institution, as defined in section 20 of
5 title 18, United States Code or subparagraph
6 (A), (B), (C), (D), or (F) of section 5312(a)(2)
7 of title 31, United States Code, if such monitor-
8 ing is confined to management or professional
9 employees with significant financial responsibil-
10 ity which involves the use of independent judg-
11 ment,

12 (D) conducted in or about a gaming or
13 gambling facility operating under license or per-
14 mit issued by a State regulatory agency and as
15 required by State law or regulations enacted or
16 adopted, before January 1, 1992, to deter or
17 detect criminal activities through electronic
18 monitoring, or

19 (E) conducted only to the extent necessary
20 to ensure an employee provides the notices re-
21 quired by the Truth in Lending Act and the
22 regulation under such Act designated Regula-
23 tion Z, the Equal Credit Opportunity Act and
24 the regulation under such Act designated Regu-
25 lation B, the Fair Credit Reporting Act, the

1 Fair Credit Billing Act, the Fair Debt Collec-
2 tion Practices Act, the rule of the Federal
3 Trade Commission on credit practices, the regu-
4 lations and consent orders of the Federal Trade
5 Commission on unfair acts and practices, the
6 Telephone Consumer Protection Act of 1991
7 and regulations under such Act, and all cor-
8 responding State laws and regulations.

9 (3) ENFORCEMENT.—The provisions of this Act
10 made applicable to the electronic monitoring de-
11 scribed in paragraphs (1) and (2) shall be enforced
12 in accordance with section 12 of this Act.

13 (c) THIRD PARTY.—

14 (1) MONITORING FOR ANOTHER PERSON.—A
15 person who engages in electronic monitoring may
16 not perform electronic monitoring for another person
17 unless the requirements of this Act are complied
18 with.

19 (2) USE OF DATA.—A person who contracts
20 with or otherwise obtains the services of a third
21 party to electronically monitor the employees of such
22 person may not use the data obtained from such
23 monitoring unless the requirements of this Act are
24 complied with.

1 **SEC. 14. REGULATIONS.**

2 The Secretary shall, within 6 months after the date
3 of the enactment of this Act, issue regulations to carry
4 out this Act.

5 **SEC. 15 PREEMPTION.**

6 This Act shall not be construed to restrict, limit, or
7 eliminate a requirement of a State or political subdivision
8 of a State or of a collective bargaining agreement relating
9 to electronic monitoring which is more stringent than any
10 requirement of this Act.

11 **SEC. 16. COVERAGE OF EMPLOYEES OF THE HOUSE OF**
12 **REPRESENTATIVES AND SENATE.**

13 (a) APPLICATION.—With the exception of section 12,
14 this Act (including the substantive requirements of imple-
15 menting regulations issued under section 14) shall apply
16 to employees and to employing authorities.

17 (b) ADMINISTRATION.—

18 (1) HOUSE OF REPRESENTATIVES.—The rem-
19 edies and procedures of the Fair Employment Prac-
20 tices Resolution shall apply with respect to a viola-
21 tion of this Act as it is made applicable by sub-
22 section (a) to employees of the employing authorities
23 described in subsection (a)(2)(A). The Office of Fair
24 Employment Practices may, in addition to those
25 remedies available under the Fair Employment
26 Practices Resolution, assess such an employing au-

1 thority a civil penalty of not more than \$10,000 for
2 each violation. In determining the amount, the Of-
3 fice shall take into account the previous record of
4 the employing authority involved in terms of compli-
5 ance with this section and the gravity of the viola-
6 tion. Any such penalty collected shall be paid into
7 the Treasury of the United States.

8 (2) SENATE.—The remedies and procedures
9 utilized by the Office of Senate Fair Employment
10 Practices, established by section 303 of the Civil
11 Rights Act of 1991, shall apply with respect to a
12 violation of this Act as it is made applicable by sub-
13 section (a) to Senate employees of an employing au-
14 thority described in subsection (g)(2)(B). The Office
15 of Senate Fair Employment Practices may, in addi-
16 tion to those remedies otherwise available, assess
17 such an employing authority a civil penalty of not
18 more than \$10,000 for each violation. In determin-
19 ing the amount, the Office shall take into account
20 the previous record of the employing authority in-
21 volved in terms of compliance with this section and
22 the gravity of the violation. Any such penalty col-
23 lected shall be paid into the Treasury of the United
24 States.

1 (c) WAIVER OF RIGHTS PROHIBITED.—The rights
2 and procedures provided by this Act may not be waived
3 by contract or otherwise, unless such waiver is part of a
4 written settlement agreed to and signed by the parties to
5 a pending action or complaint under this Act.

6 (d) NOTICE.—Each employing authority shall post
7 and keep posted in conspicuous places on its premises a
8 notice that shall be—

9 (1) with respect to employing authorities de-
10 scribed in subsection (g)(2)(A), prepared by the Of-
11 fice of Fair Employment Practices, and

12 (2) with respect to employing authorities de-
13 scribed in subsection (g)(2)(B), prepared by the Of-
14 fice of Senate Fair Employment Practices,
15 setting forth such information as each such Office consid-
16 ers to be appropriate to carry out this section. Such notice,
17 at a minimum, shall provide the same information as that
18 required under section 4(a)(1).

19 (e) RULEMAKING.—Subsection (b) is enacted as an
20 exercise of the rulemaking power of the House of Rep-
21 resentatives and the Senate, with full recognition of the
22 right of the House of Representatives and the Senate to
23 change its rules in the same manner, and to the same ex-
24 tent, as in any other rule of the House of Representatives
25 and the Senate.

1 (f) ENFORCEMENT.—Notwithstanding any other pro-
2 vision of this Act, no officer or employee of the executive
3 branch of the Federal Government shall have authority to
4 administer, interpret, or enforce this section.

5 (g) DEFINITIONS.—For purposes of this section—

6 (1) the term “employee” means any current,
7 prospective, or former employee of an employing au-
8 thority or any leased employee;

9 (2) the term “employing authority”—

10 (A) has the meaning given it in the Fair
11 Employment Practices Resolution, except that
12 with respect to a position on the minority staff
13 of a committee, such term means the ranking
14 minority member of such committee; and

15 (B) in the case of a Senate employee, in-
16 cludes a head of employing office as that term
17 is defined by section 301(c)(2) of the Civil
18 Rights Act of 1991; and

19 (3) the term “Fair Employment Practices Reso-
20 lution” means—

21 (A) House Resolution 558 of the One
22 Hundredth Congress, as adopted October 4,
23 1988, and incorporated into rule LI of the
24 Rules of the House of Representatives of the
25 One Hundred Second Congress; or

1 (B) any other provision that continues in
2 effect the provisions of such resolution.

3 **SEC. 17. EFFECTIVE DATE.**

4 This Act shall take effect on 6 months after the date
5 of the enactment of this Act, except that an employer who
6 is engaged in electronic monitoring on the expiration of
7 such 6 months shall have 60 days after such expiration
8 to provide each affected employee with the notice required
9 by this Act.

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