

103D CONGRESS  
1ST SESSION

# S. 984

To prevent abuses of electronic monitoring in the workplace, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, APRIL 19), 1993

Mr. SIMON introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To prevent abuses of electronic monitoring in the workplace,  
and for other purposes.

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) CONTINUOUS ELECTRONIC MONITORING.—

9 The term “continuous electronic monitoring” in-  
10 cludes activities in which electronic monitoring of

1 employees occurs on a continuous basis and is not  
2 periodic or random in nature, and such term shall  
3 include the periodic inspection of continuous video  
4 monitoring from an off-site location, which is used  
5 to deter crime and to provide evidence to law en-  
6 forcement personnel as well as electronic identifiers  
7 or accessors such as electronic card or badge access  
8 systems.

9 (2) ELECTRONIC MONITORING.—

10 (A) IN GENERAL.—Except as provided in  
11 subparagraph (C), the term “electronic mon-  
12 itoring” means the collection, storage, analysis,  
13 or reporting of information concerning an indi-  
14 vidual’s activities by means of a computer, elec-  
15 tronic observation and supervision, telephone  
16 service observation, telephone call accounting,  
17 or other form of visual, auditory, or computer-  
18 based technology that is conducted by any  
19 method other than direct observation by an-  
20 other person, including the following methods:  
21 Transfer of signs, signals, writing, images,  
22 sounds, data, or intelligence of any nature  
23 which are transmitted in whole or in part by a  
24 wire, radio, electromagnetic, photoelectronic, or  
25 photo-optical system.

1 (B) TELEPHONE CALL ACCOUNTING.—The  
2 term “telephone call accounting” means the  
3 practice of recording the telephone numbers  
4 called by a specific telephone or group of tele-  
5 phones, including—

6 (i) the telephone number from which  
7 a call is being made,

8 (ii) the telephone number which is  
9 being called,

10 (iii) the time when the telephone call  
11 was connected,

12 (iv) the time when the telephone call  
13 was completed, and

14 (v) identification of the operator, if  
15 any, who assisted in placing the telephone  
16 call,

17 for the purpose of individual employee evaluations or  
18 the setting of production quotas or work perform-  
19 ance expectations.

20 (C) EXCLUSION.—The term “electronic  
21 monitoring” does not include—

22 (i) the interception of wire, electronic,  
23 or oral communications as described in  
24 chapter 119 of title 18, United States  
25 Code; and

- 1 (ii) the electronic transfer of—  
2 (I) payroll data,  
3 (II) insurance and other benefit  
4 data,  
5 (III) employee job application  
6 data, or  
7 (IV) other personnel-related data  
8 that an employer may collect,  
9 for administrative purposes only.

10 (3) EMPLOYEE.—The term “employee” means  
11 any current, former, or leased employee of an em-  
12 ployer.

13 (4) EMPLOYER.—The term “employer” means  
14 any person who—

15 (A) is engaged in commerce, and

16 (B) who employs employees,

17 and includes any individual, corporation, partner-  
18 ship, labor organization, unincorporated association,  
19 or any other legal business, the Federal Government,  
20 any State (or political subdivision thereof), and any  
21 agent of the employer.

22 (5) PERSONAL DATA.—The term “personal  
23 data” means any information concerning an em-  
24 ployee which, because of name, identifying number,  
25 mark, or description, can be readily associated with

1 a particular individual, and such term includes infor-  
2 mation contained in printouts, forms, or written  
3 analyses or evaluations.

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

7 (7) TELEPHONE SERVICE OBSERVATION.—The  
8 term “telephone service observation” means the  
9 practice of listening to or recording telephone calls  
10 being made by, or received by, an employee in order  
11 to monitor the quality of service provided by the em-  
12 ployee.

13 (8) SECRETARY.—The term “Secretary” means  
14 the Secretary of Labor.

15 **SEC. 3. GENERAL REQUIREMENTS.**

16 (a) ENGAGING IN ELECTRONIC MONITORING.—An  
17 employer may engage in electronic monitoring of the em-  
18 ployer’s employees only so long as the employer complies  
19 with the provisions of this Act and other applicable law,  
20 including section 15.

21 (b) REVIEW AND USE.—An employer may review  
22 data obtained by the electronic monitoring of the employ-  
23 er’s employees only if the employer meets the requirements  
24 of section 6, and may use such data only if the employer  
25 meets the requirements of section 8.

1 **SEC. 4. NOTICE REQUIREMENTS.**

2 (a) SECRETARY'S NOTICE.—

3 (1) IN GENERAL.—The Secretary shall prepare,  
4 have printed, and distribute to employers a notice  
5 that will inform employees—

6 (A) that an employer engages in or may  
7 engage in electronic monitoring of employees  
8 and specifies the circumstances (including the  
9 electronic monitoring and exception described in  
10 section 5) under which an employee is or is not  
11 entitled to additional notice under this section;  
12 and

13 (B) of the rights and protections provided  
14 to employees by this Act.

15 (2) POSTING OF NOTICE.—Each employer who  
16 engages in electronic monitoring shall post and  
17 maintain the notice required in paragraph (1) in  
18 conspicuous places on its premises where notices to  
19 employees are customarily posted.

20 (b) EMPLOYER'S SPECIFIC NOTICE.—Each employer  
21 shall provide to each employee who will be electronically  
22 monitored, and the exclusive bargaining representative, if  
23 any, prior written notice describing the following regard-  
24 ing the electronic monitoring of such employees:

25 (1) The forms of electronic monitoring to be  
26 used.

1           (2) The personal data to be collected.

2           (3) The hours and days per calendar week that  
3 electronic monitoring will occur.

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

6           (5) Interpretation of printouts of statistics or  
7 other records of information collected through elec-  
8 tronic monitoring if the interpretation or records  
9 may affect one or more of the employer's employees.

10          (6) Existing production standards and work  
11 performance expectations.

12          (7) Methods for determining production stand-  
13 ards and work performance expectations based on  
14 electronic monitoring statistics if the methods affect  
15 the employees.

16          (8) A description of the electronic monitoring.

17          (9) A description of the exception that is au-  
18 thorized under section 5(c)(1) to be undertaken  
19 without notice.

20          (c) EMPLOYER'S NOTICE TO PROSPECTIVE EMPLOY-  
21 EES.—

22           (1) IN GENERAL.—Each employer shall notify a  
23 prospective employee at the first personal interview  
24 of existing forms of electronic monitoring conducted

1 by the employer which may affect the prospective  
2 employee if such employee is hired by the employer.

3 (2) SPECIFIC NOTICE.—Each employer, upon  
4 request by a prospective employee or when the em-  
5 ployer offers employment to a prospective employee,  
6 shall provide the prospective employee with the writ-  
7 ten notice described in subsection (b).

8 (d) CUSTOMER NOTICE.—Employers who engage in  
9 telephone service observation shall inform customers who  
10 may be subject to such telephone service observation of  
11 this practice in any recorded message or automated at-  
12 tendant used in connection with customer telephone calls.  
13 If the employer does not use such a recorded message or  
14 automated attendant, the employer shall place in each of  
15 its customer bills a statement that the employer is engag-  
16 ing in such observation.

17 (e) PUBLIC NOTICE.—If an employer engages in elec-  
18 tronic monitoring of members of the public who are not  
19 customers of the employer, the employer shall notify such  
20 individuals of such electronic monitoring. Such notice may  
21 take the form that is reasonably calculated to reach mem-  
22 bers of the public who may be affected.

23 (f) GOVERNMENT NOTICE.—If a Federal agency en-  
24 gages in telephone service observation, the agency shall  
25 provide the public, upon the public's telephone contact of

1 the Federal agency, a reasonable opportunity to not be  
2 a part of or included in any such observation.

3 (g) RULE OF CONSTRUCTION.—Notice provided  
4 under this Act shall not be construed as constituting con-  
5 sent under chapter 119 of title 18, United States Code.

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

7 (a) GENERAL RULE.—An employer may engage in  
8 electronic monitoring of any of the employer’s employees  
9 on a periodic or random basis as authorized in subsection  
10 (b).

11 (b) AUTHORITY.—

12 (1) NEW EMPLOYEES.—An employer may en-  
13 gage in periodic or random electronic monitoring of  
14 an employer’s employee if the cumulative total pe-  
15 riod of such employee’s employment with the em-  
16 ployer is not more than 60 working days.

17 (2) WORK GROUPS.—An employer may engage  
18 in electronic monitoring of a work group of employ-  
19 ees on a periodic or random basis for not more than  
20 2 hours in any calendar week. Except as otherwise  
21 provided in this subsection, the notice required  
22 under section 4(b) to each of the employer’s employ-  
23 ees within such work group for such electronic mon-  
24 itoring shall be provided to each of the employer’s  
25 employee within the work group at least 24 hours

1 but not more than 72 hours prior to engaging in  
2 such electronic monitoring. For purposes of this sub-  
3 section, the term “work group” means a group of  
4 employees employed in a single facility and engaged  
5 in substantially similar work at a common time and  
6 in physical proximity to each other.

7 (3) OTHER EMPLOYEES.—An employer may not  
8 engage in periodic or random electronic monitoring  
9 of an employee with a cumulative employment period  
10 of at least 5 years with the employer.

11 (c) EXCEPTION TO NOTICE REQUIREMENT.—

12 (1) SPECIAL ELECTRONIC MONITORING.—Sub-  
13 ject to paragraph (2), an employer, other than the  
14 Federal Government or State or political subdivision  
15 thereof, who has a reasonable suspicion that an em-  
16 ployer’s employee is engaged in or is about to en-  
17 gage in conduct which—

18 (A) violates criminal or civil law, or con-  
19 stitutes willful gross misconduct; and

20 (B) has a significant adverse effect involv-  
21 ing economic loss or injury to the employer or  
22 the employer’s employees,

23 the employer may engage, on the employer’s work-  
24 site, in electronic monitoring of such employee or of  
25 an area in which the actions described in subpara-

1 graphs (A) and (B) occur without providing the no-  
2 tice required by section 4(b), 5(a) or 5(b), and with-  
3 out regard to sections 9, 10(a), and 11(2).

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

7 (A) with particularity the conduct that is  
8 being electronically monitored and the basis for  
9 the electronic monitoring;

10 (B) an identification of the specific eco-  
11 nomic loss or injury to the business of the em-  
12 ployer or the employer’s employees resulting  
13 from such conduct or the injury to the interests  
14 of such employer or employer’s employees; and

15 (C) that the employer is in compliance  
16 with section 5(c)(1).

17 The employer shall sign the statement and retain it  
18 for 3 years from the date the electronic monitoring  
19 began or until judgment is rendered in an action  
20 brought under section 12(c) by an employee affected  
21 by such electronic monitoring, whichever is later.

22 **SEC. 6. REVIEW OF CONTINUOUS ELECTRONIC MONITOR-**  
23 **ING.**

24 (a) REVIEW DURING ELECTRONIC MONITORING.—

25 No employer may review data obtained by continuous elec-

1 tronic monitoring of the employer's employees on a peri-  
2 odic or random basis, unless the electronic data was ob-  
3 tained from the use of an electronic identifier, locator, or  
4 accessor, such as an electronic card or badge access sys-  
5 tem, telephone call accounting system, or the data is con-  
6 tinuously monitored by an employer or appears simulta-  
7 neously on multiple television screens or sequentially on  
8 a single screen.

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

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

17 (a) IN GENERAL.—Except as provided in subsection  
18 (b), each employer shall provide the employer's employee  
19 (or the employee's authorized agent) and the exclusive  
20 bargaining representative, if any, with a reasonable oppor-  
21 tunity to review and, upon request, a copy of all personal  
22 data obtained or maintained by electronic monitoring of  
23 the employee.

24 (b) EXCEPTION.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), an employer is not required to provide the  
3 employer’s employee (or the employee’s authorized  
4 agent) or the exclusive bargaining representative, if  
5 any, a reasonable opportunity to review data that  
6 are obtained by electronic monitoring described in  
7 section 5(c)(1).

8           (2) REVIEW PERMITTED.—If—

9           (A) the investigation by an employer with  
10 respect to electronic monitoring described in  
11 section 5(c)(1) that was conducted on the em-  
12 ployer’s employee has been completed, or

13           (B) disciplinary action has been initiated  
14 by an employer against the employer’s employee  
15 who was the subject of such electronic monitor-  
16 ing,

17 whichever occurs first, such employer shall promptly  
18 provide such employee (or the employee’s authorized  
19 agent) and exclusive bargaining representative, if  
20 any, with a reasonable opportunity to review and  
21 upon request, obtain a copy of, the personal data,  
22 and any interpretation of such data obtained from  
23 such electronic monitoring.

1 **SEC. 8. USE OF DATA COLLECTED BY ELECTRONIC MON-**  
2 **ITORING.**

3 (a) EMPLOYER ACTIONS.—An employer shall not  
4 take any action against an employee on the basis of per-  
5 sonal data obtained by electronic monitoring of such em-  
6 ployee unless the employer has complied with all the re-  
7 quirements of this Act.

8 (b) DATA SHALL NOT BE USED AS SOLE BASIS FOR  
9 EVALUATION OR PRODUCTION QUOTAS.—An employer  
10 shall not use quantitative data on an employee that is ob-  
11 tained by electronic monitoring and that records the  
12 amount of work performed by such employee within a spe-  
13 cific time as the sole basis for—

14 (1) individual employee performance evaluation;

15 or

16 (2) setting production quotas or work perform-  
17 ance expectations,

18 unless an employee is not working at a facility of an em-  
19 ployer and transmits the employee's work to the employer  
20 electronically, and such data is the only basis available to  
21 such employer for such purposes.

22 **SEC. 9. ACCESS TO DATA.**

23 (a) IN GENERAL.—When an employer has an imme-  
24 diate business need for specific data and if the employer's  
25 employee who maintains such data is not available, the  
26 employer may access such data if—

1           (1) the data is alphanumeric data and does not  
2 include data obtained by the aural or visual monitor-  
3 ing of the employer’s employees or the interception  
4 of the employer’s employee communications;

5           (2) the data will not be used for the purpose of  
6 discipline or performance evaluation; and

7           (3) the employer notifies the employee who  
8 maintains such data that the employer has accessed  
9 such data and provides such notice within a reason-  
10 able time after the access has occurred.

11       (b) DEFINITION.—As used in subsection (a), the  
12 term “alphanumeric data” means data consisting entirely  
13 of letters, numbers, and other symbols. Such term does  
14 not include visual images, audio impressions or data that  
15 can be used to create visual or auditory information.

16 **SEC. 10. PRIVACY PROTECTIONS.**

17       (a) WORK RELATED.—No employer may inten-  
18 tionally collect personal data about an employee through  
19 electronic monitoring if the data are not confined to the  
20 employee’s work, unless the employee is a customer of the  
21 employer at the time of the electronic monitoring.

22       (b) PRIVATE AREAS.—No employer may engage in  
23 electronic monitoring in—

24           (1) bathrooms;

25           (2) locker rooms; or

1 (3) dressing rooms.

2 (c) FIRST AMENDMENT RIGHTS.—

3 (1) IN GENERAL.—An employer shall not inten-  
4 tionally engage in electronic monitoring of an em-  
5 ployee when the employee is exercising First Amend-  
6 ment rights, and an employer shall not intentionally  
7 use or disseminate personal data obtained by elec-  
8 tronic monitoring of an employee when the employee  
9 is exercising First Amendment Rights.

10 (2) EXCEPTION.—Electronic monitoring by an  
11 employer whose purpose and principal effect is to  
12 collect data about the work of an employee of the  
13 employer is not prohibited by paragraph (1) because  
14 it collects some incidental data concerning the exer-  
15 cise of an employee's First Amendment rights.

16 (d) DISCLOSURE.—An employer shall not disclose  
17 personal data obtained by electronic monitoring to any  
18 person or other employer or business entity except to (or  
19 with the prior written consent of) the individual employee  
20 to whom the data pertain, unless the disclosure would  
21 be—

22 (1) to officers and employees of the employer  
23 who have a legitimate need for the information in  
24 the performance of their duties;

1           (2) to a law enforcement agency pursuant to a  
2           warrant issued under the Federal Rules of Criminal  
3           Procedure, an equivalent State warrant, a grand  
4           jury subpoena, or an administrative subpoena au-  
5           thorized by a Federal or State statute;

6           (3) to the public if the data contain evidence of  
7           illegal conduct by a public official or have a direct  
8           and substantial effect on public health or safety; or

9           (4) to the exclusive bargaining representative, if  
10          any.

11          (e) ISSUANCE OF COURT ORDER.—A court order for  
12          disclosure under subsection (b) or (c) shall issue only if  
13          the law enforcement agency demonstrates that there is  
14          reason to believe the contents of the data are relevant to  
15          a legitimate law enforcement inquiry. In the case of a  
16          State governmental authority, such a court order shall not  
17          issue if prohibited by the laws of such State. A court issu-  
18          ing an order pursuant to this section, on a motion made  
19          promptly by the service provider, may quash or modify  
20          such order, if the data requested are unusually voluminous  
21          in nature or compliance with such order would cause an  
22          undue burden on the employer.

23          (f) EXCEPTION.—Electronic monitoring, including  
24          security cameras, whose purpose and principal effect is to  
25          collect data permitted by this Act is not prohibited by sub-

1 section (a) because it collects some data that is not con-  
2 fined to such employee's work or because it collects some  
3 data concerning the exercise of an employee's First  
4 Amendment rights.

5 **SEC. 11. PROHIBITIONS.**

6 No employer may—

7 (1) violate any requirement of this Act,

8 (2) engage in video monitoring with a video  
9 camera that is not visible to the subject of the elec-  
10 tronic monitoring, except in the case of electronic  
11 monitoring described in section 5(c)(1), 13(a),  
12 13(b), or 13(c)(2),

13 (3) interfere with, or deny the exercise or the  
14 attempted exercise by, an employee of any right pro-  
15 vided by section 10(c), or

16 (4) discharge, discipline, or in any manner dis-  
17 criminate against an employee with respect to the  
18 employee's compensation or terms, conditions, or  
19 privileges of employment because the employee (or  
20 any person acting pursuant to a request of the em-  
21 ployee) has—

22 (A) instituted any proceeding relating to a  
23 violation of this Act,

24 (B) has testified or is about to testify in  
25 any such proceedings, or

1 (C) disclosed information that the em-  
2 ployee reasonably believes evidences a violation  
3 of this Act.

4 **SEC. 12. ENFORCEMENT PROVISIONS.**

5 (a) CIVIL PENALTIES.—

6 (1) IN GENERAL.—Subject to paragraph (2),  
7 any employer who violates any provision of this Act  
8 may be assessed a civil penalty of not more than  
9 \$10,000 for each such violation.

10 (2) CONSIDERATIONS.—In determining the  
11 amount of any penalty under paragraph (1), the  
12 Secretary shall take into account the previous record  
13 of the person in terms of compliance with this Act  
14 and the gravity of the violation.

15 (3) ASSESSMENT AND COLLECTION.—Any civil  
16 penalty under this subsection shall be assessed by  
17 the Secretary and shall be collected in the same  
18 manner as is required by subsections (b) through (e)  
19 of section 503 of the Migrant and Seasonal Agricul-  
20 tural Worker Protection Act (29 U.S.C. 1853) with  
21 respect to civil penalties assessed under subsection  
22 (a) of such section.

23 (b) ACTIONS BY THE SECRETARY.—The Secretary  
24 may bring an action under this section to restrain viola-  
25 tions of this Act. The Solicitor of Labor may appear for

1 and represent the Secretary in any litigation brought  
2 under this Act. In any action brought under this section,  
3 the district courts of the United States shall have jurisdic-  
4 tion, for cause shown, to issue temporary or permanent  
5 restraining orders and injunctions to require compliance  
6 with this Act, including such legal and equitable or declar-  
7 atory relief incident thereto as may be appropriate, includ-  
8 ing employment, reinstatement, promotion, the payment  
9 of lost wages and benefits, and reasonable attorney fees  
10 and other litigation costs reasonably incurred.

11 (c) PRIVATE CIVIL ACTIONS.—

12 (1) IN GENERAL.—An employer who violates  
13 this Act shall be liable to the employee or prospec-  
14 tive employee affected, or any other person ag-  
15 grieved, by such violation. Such employer shall be  
16 liable for such legal and equitable or declaratory re-  
17 lief as may be appropriate, including employment,  
18 reinstatement, promotion, and the payment of lost  
19 wages and benefits.

20 (2) JURISDICTION.—An action to recover the li-  
21 ability prescribed in paragraph (1) may be main-  
22 tained against the employer in any Federal or State  
23 court of competent jurisdiction by any person for or  
24 on behalf of an employee, prospective employee or  
25 other aggrieved person.

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

3           (A) the employee, prospective employee, or  
4 other aggrieved person knew of, or

5           (B) the employee, prospective employee, or  
6 other aggrieved person could reasonably be ex-  
7 pected to know of,  
8 the alleged violation.

9           (4) COSTS.—The court shall allow the prevail-  
10 ing party (other than the Federal Government) rea-  
11 sonable costs, including attorney’s fees and expert  
12 witness fees.

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

18 **SEC. 13. APPLICATION.**

19          (a) LAW ENFORCEMENT.—This Act shall not apply  
20 to electronic monitoring administered by law enforcement  
21 agencies as may otherwise be lawfully permitted under  
22 criminal investigations.

23          (b) WORKMEN’S COMPENSATION.—This Act shall not  
24 apply to electronic monitoring conducted by employers in  
25 connection with the investigation of a workers compensa-

1 tion claim unless there is reasonable suspicion of fraud  
2 or the claim involves at least \$25,000.

3 (c) REQUIRED ELECTRONIC MONITORING.—This Act  
4 (other than sections 4(a), 4(b)(1), 4(b)(2), 4(b)(4), 7, 8,  
5 9, and 10) shall not apply to electronic monitoring—

6 (1) conducted by an employer pursuant to Fed-  
7 eral law (including regulations) governing public  
8 safety or security for public transportation;

9 (2) conducted by or for—

10 (A) the intelligence community, as defined  
11 in Executive Order 12333 (or successor order);

12 or

13 (B) intelligence community contractors  
14 with respect to contracts that bear upon na-  
15 tional security information, as defined by Exec-  
16 utive Order 12356 (or successor order);

17 (3) conducted by an employer registered under  
18 section 6, 15, 15A, 15B, 15C, or 17A of the Securi-  
19 ties Exchange Act of 1934 (15 U.S.C. 78 et seq.),  
20 section 8(a) of the Investment Company Act of 1940  
21 (15 U.S.C. 80a-1(a)), or sections 202(a)(11) and  
22 203(a) of the Investment Advisers Act of 1940 (15  
23 U.S.C. 80b-2(a)(11) and 80b-3(a)), conducted by  
24 an employer or a person associated with an employer  
25 registered or exempt from such registration under

1 section 4d, 4e, 4k, or 4m of the Commodity Ex-  
2 change Act (7 U.S.C. 6d, 6e, 6k, or 6m), conducted  
3 by a self-regulatory organization or its affiliated  
4 clearinghouse designated, registered, or exempt from  
5 registration under section 6 or 17 of such Act (7  
6 U.S.C. 8, 21), or conducted by an employer who pro-  
7 vides an electronic trading system or other facilities  
8 for one or more self-regulatory organizations des-  
9 ignated, registered, or exempt from registration  
10 under section 6 or 17 of such Act (7 U.S.C. 8, 21),  
11 as long as such monitoring is confined to manage-  
12 ment or professional employees with significant fi-  
13 nancial responsibility that involves the use of inde-  
14 pendent judgment;

15 (4) conducted by an employer that is a financial  
16 institution, as defined in section 20 of title 18, Unit-  
17 ed States Code or subparagraph (A), (B), (C), (D),  
18 or (F) of section 5312(a)(2) of title 31, United  
19 States Code, as long as such monitoring is confined  
20 to management or professional employees with sig-  
21 nificant financial responsibility that involves the use  
22 of independent judgment; or

23 (5) conducted only to the extent necessary to  
24 ensure an employee provides the notices required by  
25 the Truth in Lending Act and the regulation under

1 such Act designated Regulation Z, the Equal Credit  
2 Opportunity Act and the regulation under such Act  
3 designated Regulation B, the Fair Credit Reporting  
4 Act, the Fair Credit Billing Act, the Fair Debt Col-  
5 lection Practices Act, the rule of the Federal Trade  
6 Commission on credit practices, the regulations and  
7 consent orders of the Federal Trade Commission on  
8 unfair acts and practices, the Telephone Consumer  
9 Protection Act of 1991 and regulations under such  
10 Act, and all corresponding State laws and regula-  
11 tions.

12 (d) THIRD PARTY.—

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

18 (2) USE OF DATA.—A person who contracts  
19 with or otherwise obtains the services of a third  
20 party to electronically monitor the employees of such  
21 person may not use the data obtained from such  
22 monitoring unless the requirements of this Act are  
23 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 the Federal Government, or a  
8 State or political subdivision of a State or of a collective  
9 bargaining agreement relating to privacy or electronic  
10 monitoring that is more stringent than any requirement  
11 of this Act.

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

14 (a) DEFINITIONS.—For purposes of this section—

15 (1) the term “employee” means any current,  
16 prospective, or former employee of an employing au-  
17 thority or any leased employee;

18 (2) the term “employing authority”—

19 (A) has the meaning given it in the Fair  
20 Employment Practices Resolution, except that  
21 with respect to a position on the minority staff  
22 of a committee, such term means the ranking  
23 minority member of such committee; and

24 (B) includes Senate employees as defined  
25 in section 301(c)(1) of the Civil Rights Act of  
26 1991; and

1           (3) the term “Fair Employment Practices Reso-  
2           lution” means—

3                   (A) House Resolution 558 of the One  
4                   Hundredth Congress, as adopted October 4,  
5                   1988, and incorporated into Rule LI of the  
6                   Rules of the House of Representatives of the  
7                   One Hundred Second Congress; or

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

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

14           (c) ADMINISTRATION.—

15                   (1) HOUSE OF REPRESENTATIVES.—The rem-  
16                   edies and procedures of the Fair Employment Prac-  
17                   tices Resolution shall apply with respect to a viola-  
18                   tion of this Act as it is made applicable by sub-  
19                   section (b) to employees of the employing authorities  
20                   described in subsection (a)(2)(A). The Office of Fair  
21                   Employment Practices may, in addition to those  
22                   remedies available under the Fair Employment  
23                   Practices Resolution, assess such an employing au-  
24                   thority a civil penalty of not more than \$10,000 for  
25                   each violation. In determining the amount, the Of-

1        fice shall take into account the previous record of  
2        the employing authority involved in terms of compli-  
3        ance with this section and the gravity of the viola-  
4        tion. Any such penalty collected shall be paid into  
5        the Treasury of the United States.

6            (2) SENATE.—The remedies and procedures  
7        utilized by the Office of Senate Fair Employment  
8        Practices shall apply with respect to a violation of  
9        this Act as it is made applicable by subsection (b)  
10       to employees of the employing authorities described  
11       in subsection (a)(2)(B). The Office of Senate Fair  
12       Employment Practices may, in addition to those  
13       remedies otherwise available, assess such an employ-  
14       ing authority a civil penalty of not more than  
15       \$10,000 for each violation. In determining the  
16       amount, the Office shall take into account the pre-  
17       vious record of the employing authority involved in  
18       terms of compliance with this section and the gravity  
19       of the violation. Any such penalty collected shall be  
20       paid into the Treasury of the United States.

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

1 (e) NOTICE.—Each employing authority shall post  
2 and keep posted in conspicuous places on its premises a  
3 notice that shall be—

4 (1) with respect to the employing authorities  
5 described in subsection (a)(2)(A), prepared by the  
6 Office of Fair Employment Practices; and

7 (1) with respect to the employing authorities  
8 described in subsection (a)(2)(B), prepared by the  
9 Office of Senate Fair Employment Practices;  
10 setting forth such information as each such Office consid-  
11 ers to be appropriate to carry out this section. Such notice,  
12 at a minimum, shall provide the same information as that  
13 required under section 4(a).

14 (f) RULEMAKING.—Subsection (c) is enacted as an  
15 exercise of the rulemaking power of the House of Rep-  
16 resentatives and the Senate, respectively, with full recogni-  
17 tion of the right of the House of Representatives and the  
18 Senate to change its rules in the same manner, and to  
19 the same extent, as in any other rule of the House of Rep-  
20 resentatives and the Senate.

21 (g) ENFORCEMENT.—Notwithstanding any other  
22 provision of this Act, no officer or employee of the execu-  
23 tive branch of the Federal Government shall have author-  
24 ity to administer, interpret, or enforce this section.

1 **SEC. 17. EFFECTIVE DATE.**

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

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